PALESTINE MONOGRAPHS

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THE ARMISTICE IN INTERNATIONAL LAW

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ABDEEN M. JABARA

RESEARCH CENTER
PALESTINE LIBERATION ORGANIZATION

THE ARMISTICE IN INTERNATIONAL LAW

AND THE EGYPTIAN SEARCH OF ISRAEL-BOUND CARGO AND SEIZURE OF CONTRABAND UNDER THE EGYPTIAN-ISRAELI GENERAL ARMISTICE AGREEMENT

by

Abdeen M. Jabara, J.D.

Research Center * Palestine Liberation Organization

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SECTION I

THE ARMISTICE IN INTERNATIONAL LAW

The armistice agreement has been used since the days when Greece and Rome were at the height of their military power [1] as a device by two belligerents to effectuate a suspension of hostilities, and its use has gained impetus under the influence of the Covenant of the League of Nations, the Kellogg-Briand Pact and the United Nations Charter. International pressure developed for the cessation of hostilities in conflicts such as those which occurred between India and Pakistan, the Arab States and Israel, Indonesia and Netherlands.[2] Generally, these states felt they could enter into armistice agreements without giving up the substantive rights which they claimed, which would have had to be negotiated in any treaty of peace. Moreover, under the impact of modern war, the questions of reparations, sequestration of enemy property, final determination of boundary lines, repatriation of nationals, etc. have become much more complex, and thus the conclusion of an armistice sometimes provides a period for the detailed consideration of these points of contention between the belligerent parties.

The term "armistice" appears to be used to refer to both a negotiated agreement between belligerents, on the one hand, and the juridical status that prevails throughout the duration of the agreement, on the other.[3]

It is important, also, that the *negotiated* armistice agreement be distinguished from the *capitulatory* armistice. In the capitulatory armistice, the victor is able to *impose* conditions in the armistice agreement which are normally reserved for the peace treaty, and thus derogates from characterizing the armistice agreement as a *contract* wherein the parties are free to negotiate all of its terms.[4] One author has termed the "capitulatory armistice" as the "so-called" armistice[5] because it is, in fact, an embryonic peace treaty. The "capitulatory armistice" generally contains economic, political, and military provisions and is, in effect, the complete termination of hostilities rather than their mere suspension.[6]

An armistice agreement can be defined as a bilateral, negotiated contract for the suspension of hostilities for either a *definite* or an *indefinite* period of time.[7] It may be *partial* or *general.*[8] A *partial* armistice is limited to a particular place or places and/or particular force or forces. A *general* armistice creates a general suspension of hostilities between the armed forces of the belligerent parties.

The "general armistice" has been distinguished from a "truce" or "cease-fire" as being more general and for a longer duration.[9] This distinction, however, has been weakened and rendered of less importance in modern times by the tendency to use the words "armistice,,

"cease-fire" and "truce" interchangeably — although the classical distinction is still valid in situations like the Arab-Israeli war where the general armistice had been preceded by a truce.[10] All three have the effect of bringing about a suspension of hostilities. An armistice, being a contract between states, must be negotiated by the duly-authorized representatives, either military or diplomatic, of the sovereignties involved.[11] While there are no established rules as to the provisions of an armistice agreement, the typical agreement [12] is likely to contain the following provisions :

a. a provision for the effective date and time ;

b. a provision setting forth the duration of the agreement ;

c. a provision setting forth the line of demarcation and the neutral and demilitarized zones ;

d. a provision delineating the relations between the citizens of the two belligerents ;

e. a provision delineating which acts are prohibited;

f. a provision relating to prisoners of war ;

g. a provision for the establishment and functioning of consultative and supervisory machinery ;

h. provisions for any other miscellaneous political, military, and economic matters which the parties wish to include.

Obviously, the most important function of the

armistice agreement is the cessation of hostilities. The agreement may specifically provide for such cessation or it may not.[13] In either case, such a cessation obtains — because an armistice is, by definition, a cessation of hostilities. Without specific provisions to the contrary, however, the armistice does not alter the *belligerent relationship* between the parties beyond the mere *suspension of military operations* between the armed forces of the opposing sides. The state of war continues. This rule is well settled in international law as expressed by military manuals,[14] publicists,[15] judicial authorities,[16] the practice of states,[17] and international conventions.[18] This is to say that any other effect that the armistice is to have on the rights and obligations accruing to the parties under international law by the existence of a state of war between the parties must be expressly stipulated in the agreement.

As a contract between belligerents, the armistice is not subject to any of the limitations imposed on contracting parties in municipal law, and they are free to "include in an armistice any provisions which they may desire, unfettered by either legal restrictions or precedents, guided only by the necessities of war."[19] Therefore, the parties are only bound to the substance of the armistice and are not bound to items which might have been included in the agreement but were not. The persons who are negotiating, be they military or diplomatic, are charged with the burden of understanding the scope and nature of an armistice agreement and the juridical status which it creates.

The agreement may be revised and amended by all

parties concerned, but provisions cannot later be imported into the agreement unilaterally, however advantageous they might be to one of the parties.

* * *

As pointed out above, in international law the juridical status after the signing of an armistice agreement (or whatever stipulated time the agreement is to take effect) is a continuance of the state of war, whether the war be *de jure* or *de facto*. The condition altered by the armistice agreement is the condition of armed hostilities. Other rights which accrue under a state of war continue, as do obligations which accrue thereunder. The termination of a state of war occurs only by the signing of a treaty of peace;[20] the lapse of a long period of time in which *both* parties tacitly agree on the status quo;[21] a declaration by all the competent authorities;[22] or, in the case of a surrender by one of the belligerents, by a unilateral declaration for purposes of municipal law.[23] In those instances in which there occurred no outbreak of hostilities without the conclusion of a peace treaty or a valid declaration, it was solely because both parties had decided not to press their claims, or because the claimant party had found other methods for satisfaction of his claims.[24] The claims may have been weak, the claimant party may have placed little importance on the claims, or some effective channel existed for satisfaction of those claims outside of renewed hostilities. So long as one of the belligerent parties states that he is at war with the other belligerent party, the state of war continues. The contention that the duration of time in which an armistice

agreement has been operative, by itself, changes a mere cessation of hostilities into a permanent peace cannot be sustained. If two belligerents fail to conclude a peace because of the nature of the issues outstanding between them or the intransigency of one of the parties, this cannot mean that they have then consented to the status quo by default and that this status quo is then binding on all parties. This position would place the burden on one of the parties to renew hostilities in order to preserve claims which would otherwise, according to the above-stated contention, be lost by the mere passage of time in which the armistice was operative.

A party to a conflict, for purposes of municipal law only, may signify the end of the war by a unilateral declaration to that effect.[25] Such a declaration is merely to establish a date of termination for the municipal law dealing with contracts, statutes of limitation, etc. and will not bind the other parties in a war. No termination of a state of war that is binding on all belligerents can be made unilaterally.[26]

* * *

The question concerning the termination of a war is, of course, integrally related to the question of the duration of the armistice. As pointed out above, an armistice may be either of definite or of indefinite duration. Those armistices which stipulate that they are to be effective "until a peaceful settlement between the parties is achieved"[27] or until there has been "an appropriate agreement for a peaceful settlement at a political level between both sides"[28] do not change the juridical nature of the armis-

tice regime by the suggestion that the armistice regime must continue until a peace treaty is concluded. The inclusion of such provisions is construed as making the armistice one of indefinite duration.[29]

Where an armistice is of *indefinite duration*, it remains effective until notice of denunciation has been given[30] or until a negociated peace treaty enters into effect. Where the period of advance notice of denunciation is specified in the agreement, this period will be controlling. Where no period is specified in the agreement, the "due" or "reasonable" notice rule obtains.

Where the armistice is for a *definite duration*, on the other hand, the occurrence of the date, event or condition stipulated in the agreement as terminating its operation will end the armistice regime.

* * *

At the moment when a state of war displaces a state of peace between two states, a body of law, the international law dealing with the conduct of war, comes into operation. This body of law was created by convention among states to regulate the scope of conflict and delineate those acts which are permitted and those which are prohibited during a war. This law is, in fact, designed to protect all belligerents from inhumane acts (such as the use of gas) and to delimit legitimate defensive measures.[31] This law, in specifying which acts are *prohibited*, also sets forth those which are *permissible*. Thus, its twofold function is to create both obligations and rights in belligerent parties as well as in neutral third parties.[32]

Because the juridical status of an armistice regime is that technically denominated as being a state of war, the rights and obligations which are created by the law of war continue to be operative during the armistice regime except for those obviated by the cessation of hostilities. Levie, in his detailed article on the nature and scope of armistice agreements, states that two different schools exist on what are permissible acts during an armistice regime.[33] The older traditional rule was that a belligerent cannot legally do anything which the enemy would have wanted to and could have prevented him from doing but for the armistice.[34] The modern rule, supported by the weight of reasoning and practice, holds that during a general armistice the belligerents must refrain from doing only those acts which are expressly prohibited in the the armistice agreement.[35] Thus, when one of the parties to an armistice agreement exercises belligerent rights which have not been specifically obviated by the armistice agreement, he is clearly within the confines of the international law dealing with armistices and may legitimately exercise those rights. In as much as the armistice regime does not signal more than the end of armed hostilities for a definite or an indefinite period, a wide range of defensive measures, while they might have been prohibited by inclusion in the armistice agreement, are lawful and require observance of neutrality laws by third states.[36]

The right to continue a naval blockade, establish contraband lists, exercise the right of visit and search of vessels and seizure of contraband, maintain prize jurisdiction and control over neutral vessels during an armistice regime have generally been accepted by publicists,[37]

judicial authorities,[38] and state practice.[39] The rationale is that these are legitimate defensive measures, that they might have been negotiated and included in the armistice agreement had the parties so intended, and that their exercise is harmonious with the juridical status of the armistice regime. This rationale becomes more compelling when the right was exercised prior to the negotiation of the armistice and might well have been included in the agreement. The modern doctrine in international law which permits a blockade, even in time of peace, for purposes of self-defense further substantiates its lawful exercise during an armistice regime as well as the lesser measure of visit and search of vessels and seizure in prize of contraband goods.[40]

Some confusion has existed about the legal character of a blockade; and what has been merely the exercise of visit, search and seizure of war contraband has erroneously been referred to as a "blockade".[41] Colombos says that "in the case of search and seizure, only such goods as are included on contraband lists and intended to be imported into enemy territory are subject to search and seizure. Once a blockade of any portion of the enemy's coasts or of his ports has been declared, all merchant ships and cargoes of whatever description and of whatever nationality they may be, which are attempting to enter or to leave the blockaded area, are subject to confiscation. The nature of the cargo on board such ships is irrelevant. The determining fact is that the ship is endeavoring to enter or leave a blockaded port or coast."[42] When a blockade is established, entry into the blockaded area is prohibited to *all* warships and merchant vessels.

* * *

A violation of an armistice agreement occurs when a party, under order or with the knowledge and consent of one of the belligerents, performs some act or acts prohibited by the agreement.[43] Prior to the Hague Conventions, such a violation gave the other party a right to repudiate the agreement, however minor the violation might have been.[44] Article 40 of both Hague Conventions authorized a repudiation of the armistice for a "serious violation" but added that in the cases of an "urgency" the violation might warrant the recommencing of hostilities immediately.[45] It is thus clear that minor violations would, under the Hague Conventions, not be sufficient for repudiation. But which violations were "serious" and which were "minor" remained a question involving great subjectivity, unless they were spelled out with some detail in the agreement. Nevertheless, a distinction was made and such distinction demonstrated that not all violations could be equated with each other.

It is worthwhile to point out here a new development with regard to this problem. In response to the Israeli "reprisals", the Secretary General of the U. N. distinguished between the "cessation of hostilities" aspect of the Arab-Israeli General Armistice Agreements and the other provisions of the Agreements.[46] The Secretary-General read the Agreements in the light that the cessation of hostilities aspect existed independently of the other provisions, and that violation of other provisions would not create a right in the injured party to resume hostilities. This interpretation was ratified by Egypt, Syria, Lebanon, Jordan and Israel and would thus constitute a binding amendment to the Armistice Agreements.[47] It seems that this approach would mitigate the

difficulty of determining what constitutes a serious violation and what constitutes a minor violation.

Of course, an armed action without repudiation would be in direct contravention of the cessation of hostilities provision of an agreement and would create a right of repudiation in the non-violating party.

* * *

The difficulty frequently arises as to interpreting particular provisions of a specific armistice agreement. This has been most true when belligerents have been unwilling to use unambiguous language that would circumscribe their freedom of action. Such difficulty of interpretation poses a number of questions. Who is to interpret the coverage and meaning of ambiguous words and phrases ? What is the role of precedent and international law in such interpretation ? Is such an interpretation binding on both parties ?

Very often the armistice agreement will provide for the establishment of a commission to supervise the implementation of the armistice agreement.[48] The jurisdiction and powers of the commission will be derived from the agreement itself as a result of their inclusion in the agreement by the belligerent parties. The jurisdiction of the commission and its decisions will be binding on both parties during the continuance of the armistice regime. If an appellate procedure from its decisions is provided, such decisions made at the appellate level are controlling. Generally such commissions do not operate

as judicial organs in the strict sense but merely as administrative machinery for the functioning of the agreement.

Outside of determining its jurisdictional competence, it is unlikely that the commission would be equipped or competent to apply the established rules of international law to the interpretation of ambiguous words or phrases or the traditional scope of like provisions. Such questions, in view of Article 36 (3) of the U. N. Charter, which states that legal disputes should normally be referred by the parties to the International Court, could be adequately adjudicated only by the International Court providing, of course, that both parties were willing to accept the Court's decision.[49] The importance of this becomes more apparent when both parties are in agreement that the issues in the dispute are essentially legal.[50]

WHEN DOES WAR EXIST FOR PURPOSES OF INTERNATIONAL LAW ?

The proposition that a state of war exists under an armistice regime presupposes that a state of war existed before the signing of the armistice. While, under general international law as well as under the regulations annexed to the Hague Conventions, the armistice is conceived of as being an incident of war and the existence of a war is a condition precedent for an armistice,[51] some writers on the Arab-Israeli Armistice Agreements have made distinctions between the existence of a *de jure* war on the one hand and a *de facto* war on the other, and have suggested that only the existence of a *de jure* war before an armistice agreement preserves the juridical status of a state of war under the armistice regime. These writers differentiate the *de jure* war from the *de facto* war by denominating the former as a declared war and the latter as an undeclared war. They contend that the exercise of belligerent rights under an armistice is illegal unless there had existed a declared war.

Although Grotius laid down the rule that a declaration of war is necessary,[52] the practice of States shows that this rule was not accepted: many wars have taken place between the time of Grotius and the present day

without a previous declaration of war. It has been noted that during the period between 1700 and 1900 there were nearly 150 wars, but only about twenty formal declarations of war, and that many of those declarations were made after the commencement of hostilities.[53] While a number of writers were to follow Grotius in espousing this doctrine, until the Second Peace Conference at the Hague in 1907 such a rule was sanctioned neither by custom nor by a general Treaty of the Powers. Moreover, a number of writers had sanctioned the state practice of no declaration.[54] The Japanese attack on Port Arthur led to the feeling that a rule concerning declarations was needed so that States would not be attacked by surprise and that the intention of the belligerent would be manifest, both to the enemy State and to neutral States. Article 1 of the Hague Convention of 1907 relative to the opening of hostilities states that "hostilities must not commence without previous and explicit warning, in the form of either a reasoned declaration of war or of an ultimatum with a conditional declaration of war."[55] One writer, in a thorough study of the present status of the state of war doctrine, asserted that state practice prior to the adoption of this Convention led to the conclusion that, insofar as a "state of war" had any generally accepted meaning, it was a situation regarded by one or both parties to a conflict as constituting a "state of war."[56] Most writers admitted the general acceptance by States of this subjective approach to the question, "When does war exist?"[57] Whether a state of war existed or not depended merely on the indication by one of the belligerents, whether actual hostilities had taken place or not. Moreover, such indication could be made *after* the outbreak of hostilities.

In the post-Hague Convention period, the situation has remained much the same. As Brownlee points out in his study, the developments in state practice, and thus international law since 1920, has confirmed that a declaration of war is not a necessary criterion for determining the existence of a war for purposes of international law.[58] The importance of the declaration of war, he points out, has been greatly diminished since 1920 by the realization on the part of governments that legal obligations, the observance of which was contingent upon the existence of a *de jure* war, could be too easily evaded simply by not declaring war. Several extra-legal factors led to what was, in effect, the erosion of the state of war doctrine in recent history, so that characterizing a war as *de jure* or *de facto* for purposes of rights and obligations under the international law of war became both academic and casuistic. Brownlee suggests that some of these factors are the following :

> In the view of most of the governments there were substantial reasons of policy for avoiding a state of war while at the same time using the desired amount of coercion. In the era of constitutional government the executive was usually bound to observe time-consuming and politically embarrassing procedures before recourse to "war." The process involved preparation of public opinion and the rallying of sufficient support in the legislative assembly. Recourse to "war" incurred a certain odium; "war" was a term which had acquired a deep psychological and emotional significance. "War" implied full-scale combat which offended pacific sentiment and was wasteful of lives and a nation's resources. Furthermore, if a government admitted the existence of a state of war third states could, without embarrassment, demand

> observance of neutral rights and were themselves under various legal duties. The "state of war" involved a termination of commercial intercourse between the contending states and the invalidation or suspension of treaties.[59]

Stone enumerates some legal developments that were involved in this process :

a. The warning given to potential aggressors by the war guilt and reparations clauses of the Treaty of Versailles.

b. The sanctions and peace enforcement provisions of the League of Nations Covenant and now the U.N. Charter.

c. The "outlawry" of war by the Kellogg-Briand Pact.

d. The war crimes trials, especially on the aggressive war count.

e. The fear of an embargo on war supplies under legislation such as the American Neutrality Act of 1937.[60]

A further factor may be added, and that is the non-recognition of the object-State's existence.

For all or some of the above legal and non-legal reasons, States often considered it desirable to avoid war in the *de jure* sense by recourse either to some restricted use of force with a limited object or to extensive operations without admitting to the existence of a state of war. Such situations occurred in modern times in the

Manchurian War between China and Japan in 1931; the Italio-Ethiopian War in 1935; the Sino-Japanese hostilities between 1937-1941; the Arab-Israeli War in 1948; the "armed conflict" between the United Kingdom, France and Israel on the one side and Egypt on the other in 1956; and the Vietnamese War of 1965. Yet States recognized that the international law of war, as pointed out above, was important in the conduct of warfare because it not only created rights in belligerents but also obligations and restrictions on the scope of the conflict. If one was to attach the operation of the laws of war, its rights and duties, to the existence of a declaration, then conflict would be unregulated and the protection and obligations of an international law of war would not accrue to the respective belligerents.

In light of these facts, modern international law recognizes that a state of war may exist although there was no official or formal declaration to that effect. This rule has been enunciated in judicial decisions,[61] by publicists,[62] and by state practice.[63] The attitude of third states is not decisive in making the legal characterization of a conflict for purpose of international law but the actual existence of a war will govern the legal relations between the belligerents *inter se*.[64]

The declaration of war was largely designed as a clear manifestation of the *animus belligerendi* of one of the parties because war presumes a conflict between States with the requisite belligerent intent by at least one of the parties. The existence of the requisite *animus* or intent may be ascertained by the nature of the hostilities and a host of circumstances surrounding the conflict, like

the declaration of martial law, enactment of prize legislation, etc. Brierly has said that "if acts of force are sufficiently serious and long continued then, even if both sides disclaim an *animus belligerendi* and refuse to admit that a state of war has arisen between them, a legal presumption is nevertheless justified that the state of facts for which they are responsible is war." Thus, the suggestion that only a formal declaration gives an armed conflict the seal of the party's intent would be untenable. The failure or unwillingness to make a declaration may result from non-recognition of the other belligerent[65] although the unwillingness of either State to recognize the other would not affect the capacity of the two States to exist in the legal relationship of a state of war.[66]

While many publicists[67] and the Geneva Conventions of 1949[68] substantiate this rule that a declaration of war is merely optional by the application of the laws of neutrality to a *de facto* war, third States have made decisions whether to observe neutrality legislation on the particular fact situation. It can, however, hardly be construed as being illegal for a belligerent to demand compliance with neutrality laws.

SECTION II

The Arab-Israeli War, which broke out in 1948 upon termination of the British Mandate in Palestine, was attended by large-scale hostilities between the Arab and Israeli forces. A Truce was ordered by the Security Council of the United Nations[69] which subsequently proved to be ineffectual in bringing about a cessation of hostilities between the States involved. The United Nations then induced the negotiation of general armistice agreements between Israel and the Arab States and an uneasy suspension of hostilities came into effect as the result of armistice agreements concluded between the belligerent parties at Rhodes.[70] The years that have followed since the signing of these agreements have shown that the Palestine problem has lost little of its acridness.

The Arab States continued to assert their claims regarding repatriation and compensation for the Palestinian refugees, the boundary and territorial questions raised by the establishment of Israel and the subsequent war, the status of Jerusalem as an international city, etc. The failure of the Palestine Conciliation Commission and the parties concerned to settle these outstanding claims (thus necessitating the continuance of the armistice regime) has raised, on numerous occasions, the question as to the

juridical status under the regime and the rights of the respective belligerents thereto. The Egyptian exercise of the belligerent right of search and seizure in prize of Israel-bound contraband has been one source of this question.

The first section of this monograph examined the armistice agreement and armistice regime as a general incident of war in the context of international law. The present section will examine the relevant facts of the Egyptian-Israeli dispute concerning Egyptian seizure of contraband goods, against the background of the general survey of the law in the first section.

EGYPTIAN EXERCISE OF VISIT AND SEARCH OF ISRAEL-BOUND VESSELS AND SEIZURE OF CONTRABAND

When war broke out in 1948, the Egyptian Government notified the United Nations of Egypt's intervention in Palestine,[71] decreed martial law throughout Egypt,[72] and issued a series of regulations applicable to all ships in Egyptian harbors and territorial waters, including those using the Suez Canal. These proclamations established a contraband list,[73] the procedure for the search of vessels and seizure of contraband,[74] and a Prize Court for condemnation in prize.[75] On subsequent occasions, these regulations were amended and new regulations promulgated. Such measures were taken under rights *jure belli* and Article 10 of the Constantinople Convention of 1888.[76] The regulations were designed to protect Egyptian military forces in the field by reducing supplies to enemy forces.[77]

Inspection service of vessels was set up in the ports of Alexandria, Port Said and Suez as a measure taken under the martial law decree. Authority for making the inspections was placed within the competence of Egyptian Customs Authorities. They were empowered, by Pro-

clamation No. 13, to inspect the ships' bills of lading and to consider the variety of goods aboard in order to make sure that the ship was not transporting munitions or other contraband destined directly or indirectly to reach persons or institutions in Israel. Such contraband, when found, was taken into custody by the Customs officers after a detailed inventory had been made. On June 6, 1948 the inspection was extended to all goods exported from Palestine.

The enforcement of these regulations was carried out with due regard to neutral rights. The Proclamation of June 28, 1948, stipulated that contraband shipped to Palestine aboard neutral ships before the outbreak of hostilities could be freed if proof was provided that the goods remained the property of the neutral exporter, residing in the neutral country, and that he or his Company were not suspected of continuing business with the "irregular Zionist forces" in Palestine. The goods, when released by the Customs Authorities, were re-exported to the country of origin.

Arms, munitions and other goods, shipped in neutral vessels not destined for Palestine, were not subject to any of the restrictive measures. Food and other goods necessary for the ship's crew and passengers were not confiscated; nor were medical supplies or instruments for the sick and wounded, even though they might be destined for Palestine. All rules issued originally for ships were extended to aircraft and their cargo.

After the signing of the Armistice Agreement, the Egyptian Government introduced changes in the regu-

lations concerning inspection, removing some items from its war contraband list[78] and easing the inspection procedure of ships. To establish hostile destination, more than one incriminating presumption was required — except when the ship was proceeding to an Israeli port, when the shipping documents did not clearly indicate the destination of the goods, or when the papers were suspected of being false or intentionally destroyed. Goods consigned in the name of the shipper or one of his agencies in the neutral country were no longer considered to have a hostile destination, unless the shipper's name had been blacklisted by Egyptian authorities because of previous violations.

In a Proclamation issued on July 8, 1949, the Prize Court was established to adjudicate which seized goods would be condemned in prize. According to the Proclamation, the Court had to apply the established rules of international law and, in the absence of an applicable rule, make its decisions according to equity. Its mandate provided that it was to condemn as prize all goods sent directly or indirectly to persons or institutions in Israel that had as their purpose, or that would accomplish, the intensification of the Zionist war effort, whether the goods had been captured in the territorial waters of Egypt, in those of Israel, or on the high seas. It adjudicated the validity of captures in prize and any demand for damages by the owners in the event of a wrongful seizure. All ships belonging to the State of Israel, Israeli companies or Israeli residents were subject to confiscation without adjudication.

The owner of the seized goods was entitled to

appear either personally or through his legal representative before the Prize Court. Also, the interest of the proprietary owner could be defended by the Consulate of the country of which he was a national. Once judgement had been passed, no appellate machinery was available, but the Martial Law Authorities had to confirm the verdict or send the case back for further examination by the Prize Court. Moreover, the Martial Law Authority could free the prize, notwithstanding the judgment of the Court.

That the Court acted independently of the political authority is demonstrated by the fact that the Court refused to confirm the decision of the General Governor dated June 6, 1948, which seized all goods exported from Palestine, since that decision was made under Proclamation No. 13 of May 18, 1948 which only dealt with the inspection of Ships and the seizure of goods on their way to Palestine. In this case, the goods in question had been exported from Palestine, therefore the Court found that Proclamation No. 13 could not be applied.[79]

If a ship was taken out of her way and brought into port for inspection, the action was legitimate only if reasonable grounds for suspicion existed and the ship had not been detained too long.[80]

The neutral or enemy character of goods sold and shipped before the outbreak of hostilities was determined according to the contracts between the parties. Absolute contraband which was loaded before the outbreak of hostilities by a neutral shipper and which remained the property of the neutral at the time of seizure, could be

confiscated but its value must be paid to the neutral owner (a practice in accordance with Article 43 of the London Declaration of 1909) if the shipper was not suspected of having more than mere commercial relations with enemy nationals.[81]

The Court held that the regulations providing for condemnation in prize rested on Egypt's rights *jure belli*, and that the exercise of these rights flowed from traditional international law, and that third parties had to respect the rights of neutrality.[82] Whether a war existed or not was not, according to the Court, adjudicable if the sovereign had stated that it was engaged in a war.[83]

The development of Egyptian prize regulations and practice owed much to the British Prize Cases of the First and Second Wars. These cases and British practice served as both precedent and guide in Egyptian prize regulations, procedure and legal argumentation. An examination of prize practice during the two world Wars reveals that the Egyptian procedure and practice was in conformity with well-established precedent.[84]

THE SECURITY COUNCIL'S CONSIDERATION OF EGYPT'S INSPECTION OF VESSELS AND SEIZURE OF CONTRABAND

On May 23 and 25, 1949, Israel submitted complaints to the Egyptian-Israeli Mixed Armistice Commission alleging violations of the Egyptian-Israeli Armistice Agreement by Egypt through her continued practice of visit and search of vessels and seizure of Israel-bound contraband. The Mixed Armistice Commission on June 8 voted with the Egyptians who maintained that the alleged action was not prohibited by Para. 2 of Article II since no "element of the land, sea, air military or paramilitary force, including non-regular forces, committed any war-like or hostile act against the military forces of the other party or against civilians in territory under control of that party."

On Aug. 4, 1949, Israel submitted another complaint to the Commission, concerning the same practice. On Aug. 29, the Egyptians demurred saying that the Commission did not have the power to discuss this complaint because the Commission's decision of June 8 concerning the same matter was *res adjudicata* of the issue. This objection was overruled and the Chairman voted with

Israel. Egypt appealed to the Special Committee, as provided by the Armistice terms. On appeal, General Riley, on June 12, 1951,voted with Egypt saying in his decision that because of the limitations in the text of the Armistice Agreement, Article I, Para. 2 (which states "No aggressive action by armed forces..."), Egypt's action was not against the Armistice Agreement. And while the interference with the passage of goods destined for Israel may be a "hostile act," it is not against the General Armistice Agreement because of the limitation imposed by the text of Article II, Para. 2, which limits "hostile act" to action committed by the military forces of one party against the military or para-military forces or civilians of the other party to the Agreement.[85] According to the Armistice Agreement, which Israel and Egypt negotiated and were signatories to, these decisions of the Mixed Armistice Commission, including the Special Committee, were final and were to be abided by on the part of both parties.[86]

On July 11, 1951, Israel addressed a letter to the President of the Security Council complaining that "in contradiction to International Law, the Suez Canal Convention of 1888 and the Egyptian-Israeli Armistice Agreement the Government of Egypt continued to detain, visit, and search ships seeking to pass through the Suez Canal on the ground that their cargo was destined for Israel."[87]

This complaint was placed on the Council's agenda and approximately six weeks were spent in Council debates, much of which was taken up by the legal positions advanced by the delegates of Israel and Egypt.

A. Israel's Legal Position

The legal position of Israel concerning Egypt's exercise of belligerent rights was essentially based on characterizing the Armistice Agreement between Egypt and Israel as an agreement *sui generis* which, irrespective of what other armistice agreements provided for and how they had been regarded in international law, brought the war between the parties to an end.[88] Because of the United Nations Charter and the involvement of the United Nations in bringing about the negotiation of the Armistice Agreement, this Armistice could not be viewed as the classical armistice in international law in which the juridical status is still one of a state of war and in which the exercise of belligerent rights is permitted.[89]

The Security Council, the countries not involved in the dispute and Israel had never recognized, Israel contended, that a state of war existed between Israel and Egypt because there had been no formal declaration of war[90] and a legal recognition of Israel's existence by the Arab countries was absent. A war can only take place between States but the Arab States have never recognized the *de facto* or *de jure* existence of Israel so they cannot then contend that a state of war exists between themselves and Israel.[91]

In consequence, Israel argued, Egypt could neither claim that a state of war existed between Israel and herself nor that a status of belligerency should be recognized by third parties. Egypt could make no unilateral claim that a state of war existed. Moreover, a state of

war could not have existed because of the U.N. Charter which prohibits the use of force except in self-defense.[92] In this case, considerations of self-defense or self-preservation were not adequate defenses for Egypt's action since nobody was attacking Egypt or interfering with her commerce or shipping.

As hostile acts, Israel further contended, the Egyptian restrictions are inconsistent with Article II, Section 2, of the Egyptian-Israeli General Armistice Agreement under which both parties are prohibited from exercising any belligerent rights.[93] The passage of two and a half years of the armistice regime makes the thesis that an armistice is only a mere cessation of hostilities implausible, and this passage of time transforms the legal relationship of the parties into a *de facto* peace.[94]

B. Egypt's Legal Position.

Egypt's legal position was that Arab-Israeli Armistice Agreements are no different from other armistices of the past and, unless the parties included specific provisions to the contrary, all acts beyond active hostilities are permitted because the state of war, for purposes of the legal relationship, continued until the signing of a treaty of peace. The Egyptian-Israeli Agreement was the product of the negotiation of the two belligerents and was in both form and substance a confirmation of established precedent.[95]

Unless a specific provision prohibiting the exercise of visit, search and seizure was included in the Armistice Agreement, Egypt could legally exercise this as a bellig-

erent right. No nation was obliged to contribute to the war-making capability of a state with whom it was at war by allowing contraband to traverse its territorial waters.

A state of war can be terminated only by the voluntary act of all belligerents and, without a termination valid in law, outstanding claims remain betwecn the belligerent parties, the legal state of war continues, and belligerent rights may be exercised to induce the settlement of these claims.[96] For Israel to suggest that she is at peace with the Arab states on the one hand and yet be unwilling to abide by United Nations Resolutions with regard to the Palestinian refugees, Jerusalem, etc. is indicative that Israel's declaration of peace is to effectuate a status-quo situation and avoid Arab pressure to satisfy outstanding claims.

To suggest that recognition by third parties of a state of war is necessary to create a state of war for purposes of international law and bring into operation the rights and obligations thereunder is erroneous.

Moreover, Arab recognition of Israel is not a condition *sine qua non* for a state of war to exist.[97] While a state of war can exist only between States, this does not mean that the belligerent States need recognize one another as States but that they exist as States in the purview of international law. The lack of recognition may mean, in fact, that such animosity exists between two states that one or both states are unwilling to extend recognition to the other.

Nor is a declaration of war a *sine qua non* for the

existence of a state of war.[98] Such a declaration is optional. Failure or unwillingness to make such a declaration under the Hague Convention does not make a war illegal, nor does it prevent the laws of warfare from coming into operation, because the mere absence of a declaration cannot be used to defeat the purpose of the international law concerning warfare.

The measures taken were meant to ensure Egypt's safety and defense. A State need not, when it legally exists in a state of war, wait until it is engaged in active hostilities to take defensive measures.

Moreover, Egypt has a legal obligation under the Charter of the Arab League which was recognized as far back as the Alexandria Protocol of 1944. In that Protocol the Arab States expressed categorically that the policy of the Arab League toward the Palestine problem would be governed by recognizing Palestine as part of the League. Part V of the Protocol declared that the Preparatory Committee of the General Arab Congress considered that "Palestine forms an important element among the Arab States and that any action affecting Arab rights in that country will in turn affect the peace and stability in the Arab World."[99]

The first steps in the Protocol's implementation were contained in Annex 1 of the Arab Pact devoted to the Palestine question. This Annex made reference to the Covenant of the League of Nations and the Treaty of Lausanne and concluded that Palestine should be independent. The Annex declared that "Even though its independence remained unrealized as a result of *force*

majeure," it was "not fitting that this should be an obstacle to the participation of Palestine in the work of the League." Accordingly, provision was made for the naming of an Arab delegate from Palestine although it was still a Mandate.[100]

C. The Security Council Resolution

On September 1, 1951, the Security Council adopted a Resolution,[101] the Draft of which was jointly submitted by the United States, the United Kingdom and France, which "calls on Egypt to terminate the restrictions on the passage of international commercial shipping and goods through the Suez Canal wherever bound and to cease all interference with such shipping beyond that essential to the safety of shipping in the Canal itself and to the observance of the international conventions in force."

The legal reasons for this Resolution stated *in the Resolution* were: (1) the pledges in the Armistice Agreements "against further acts of hostility between the parties;" (2) that the Armistice Agreements contemplated "the return of permanent peace in Palestine;" (3) that the armistice regime, being of a permanent character, does not allow either party to "reasonably assert that it is actively a belligerent" or "exercise the right of visit, search and seizure for any legitimate purpose of self-defense;" (4) that such practice is an "abuse of the exercise of the right of visit, search and seizure;" (5) that such practice cannot be justified on grounds of self-defense; and that (6) the "sanctions applied by Egypt to certain ships which have visited Israeli ports represented unjustified interference with the rights of nations to

navigate the seas and to trade freely with one another." This Resolution was voted for by Brazil, France, Holland, Turkey, the United States, the United Kingdom, and Yugoslavia. India, Nationalist China and the Soviet Union abstained.

The Resolution represents a prime example of what happens when a judicial function is usurped by a political organ and a decision is made according to political and economic considerations rather than the legal rights and obligations of the parties involved.[102] All the parties to the question before the Council agreed that the issues were legal and yet, despite the legal rationale given in the Resolution for the Council's decision, the legal case on which Israel rested had yet to be proved. Some members of the Council went so far as to state categorically that it was not on the legal issues involved that they were deciding despite the fact that the Resolution itself attempted to make a legal determination.

The Chinese delegate, in explaining his country's abstention, stated :

> My delegation will abstain from voting on the draft resolution. The draft seems to have assumed the validity of the claim that the measures adopted by Egypt in the Suez Canal are in violation of general international law and the provisions of the Suez Canal Convention and the Armistice Agreement. In our opinion, that is a point yet to be proved. Armistice is the first step to peace but that does not mean the termination of a state of war... It is unreasonable to suppose or assume that the neutralization of the Suez Canal cancels every right of the territorial power.[103]

The delegate of India, Mr. Dayal, explained his delegation's abstention as follows:

> As I have said before, the question before us is a complicated and intricate one, involving considerations of natural rights and obligations and of international law. Egypt claims certain rights in the matter but we are told that it is not necessary for the Council to pronounce upon them. The problem, it is said, is not whether the rights should be actually exercised. But obviously, it seems to us, if there is a basis for the rights, their exercise cannot be described as a hostile and aggressive act. In the opinion of my delegation, the Security Council is not the most appropriate body for the adjudication of questions involving complicated legal issues. The draft resolution before us seeks to avoid the legal issues involved.[104]

> My delegation feels that questions regarding the legal rights of the parties cannot be brushed aside as mere technicalities.[105]

The statement of the delegate of the United Kingdom, Gladwyn Jebb, is very revealing in this regard:

> As I said on August 1, these legal issues are no doubt debatable, but I still do not consider that it is necessary for the Security Council to go into them. It is at least questionable whether the Security Council is really qualified to undertake the detailed legal study and analysis which would certainly be required if the Council were to attempt to make a legal finding. Nor do we feel, for our part, that it would be profitable to make such an attempt, since the view which the Council takes on this question should depend, in our opinion, on the actual situation as it exists rather than on any legal technicalities.[106]

The same view was expressed by the U.S. delegate, whereupon the Egyptian delegate replied that the U.S. would most certainly rely on legal 'technicalities' if its vital interests were at stake.

Thus, the Resolution, which couched its conclusion in a legal rationale, was not, in fact, the product of the legal issues in the case. That the case could only be resolved on the legal issues was evident from the fact that the respective parties presented their positions on the basis of those issues. Moreover, it would seem that a decision which is based on what at least two of the permanent members of the Council regarded as the "actual situation as it exists" is a decision which cannot be justified if the decision avoids the legal issues because those issues are an integral part of the actual situation.

The motivation for the delegates' votes can be found, however, by examining some of the circumstances surrounding the Council's debate.

France, the Netherlands, Turkey, the United States and the United Kingdom had all made protests to Egypt with regard to the visit and search of vessels belonging to their nationals. In each of the protests, the position was unequivocally taken by the complaining country that it was a directly interested party which was disputing the right of Egypt to impose the restrictions. This made them interested parties to the issue raised before the Security Council. This was, in effect, a conflict of interests and a combining of the function of complainant with that of judge, a practice not allowed in any civilized legal system. In light of this, Egypt requested the Security Council to

request the opinion of the International Court of Justice on the following: "In light of the Charter of the U.N., particularly paragraph 3 of Article 27, and in view of the debate in the Security Council, are France, Netherlands, Turkey, the United Kingdom and the United States obliged to abstain from voting on the question of the restrictions imposed by Egypt in relation to passage through the Suez Canal of some war materials to Israel?"[107] This request was denied, but the conflict of interests that existed was alluded to both in the debates and in the Resolution itself.

The delegate of China said at one point:

> My delegation sympathizes with the United Kingdom and other third parties whose interests are adversely affected by the measures complained of. We hope that both the third parties and Egypt will be considerate, *that while the former will remember that they are not the objects of the measures complained of, the latter will do its best to give satisfaction to them.*[108] (italics added by author).

The U.K. did not even conceal the fact that she was most concerned about oil transport.[109] The protests of the United Kingdom to Egypt's assertion of belligerent rights were particularly sharp not only because of the general shipping activity of the United Kingdom in the area but also because of interference with the shipping of oil to the British-owned Haifa refinery which, if it were operating in full force, would have saved the British Treasury many millions of pounds annually.[110]

Another factor was the pressure by British Zionists on the United Kingdom Government. Britain, in her

protest note to Egypt dated June 8, 1948, argued that Egyptian legislation was directed against Zionism which was a political doctrine to which many British subjects adhered. Britain could not, it stated, tolerate any discrimination against her nationals.

The argument that economic interest prompted the position of some of the delegations, particularly those with substantial maritime and trading interests, is further buttressed by paragraph 9 of the Resolution, which reads in part :

> . . . these restrictions together with sanctions applied by Egypt to certain ships which have visited Israeli ports represented unjustified interference with the rights of nations to navigate the seas and to trade freely with one another, *including the Arab states and Israel.*[111] (italics added by author).

The legal status of the Resolution in international law is questionable. Did the Council intend to change the well-settled rules of international law regarding the juridical status of an armistice regime ? Is the Council bound by the Charter to consider the rules of international law in its conflict resolution ? Was the decision a resolution or a recommendation under the relevant articles of the Charter ? If the Council's decision ran counter to the well-established rules of international law as expressed by Conventions, military manuals, judicial decisions, publicists and state practice, to what extent may a State then act with certainty in accordance with rules of international law ? These are but a few of the many questions posed.

One writer has since construed this Resolution as indicating that a general armistice is a kind of *de facto* termination of a state of war.[112] This interpretation is, however, most liberal. Levie stated that :

> It is considered more likely that the Security Council's action was based upon a desire to bring to an end a situation fraught with potential danger to peace than that it was attempting to change a long-established rule of international law. By now it has become fairly obvious that the Israeli-Arab General Armistice Agreement did not create even a *de facto* termination of the war between those states.[113]

The delegate of the U.S., Warren Austin, lented credence to this view when he said in the Security Council during the debate :

> In taking its position as represented in the draft resolution before the Council, the U.S. is guided by the desire to see one source of agitation in the Near East eliminated. Also, we are convinced that the Armistice Agreement system which stopped hostilities between Israel and Egypt nearly two and a half years ago must be upheld and strengthened until such time as a permanent peace is reached. We feel that in dropping the restrictions, Egypt could make a positive contribution to the relief of tension in the Near East.[114]

State practice with regard to armistice regimes has not changed since the Resolution. British and U.S. military manuals, published since adoption of the Resolution, have continued to regard the state of war as existing after the signing of an armistice.[115] Continued tension in Korea and between India and Pakistan reveals that the countries involved are still claiming rights and no termi-

nation of the technical state of war has occurred. As between India and Pakistan, the occurrence of large-scale hostilities in 1965 demonstrates that there is any thing but a *de facto* peace between those countries.

The Security Council is empowered to obtain an authoritative clarification of the legal issues involved in any given case by asking the International Court for an Advisory Opinion.[116] The Advisory Opinion which Egypt sought might well have been expanded to include all of the legal issues raised between the two parties. A party does not give up his rights under international law through membership in the United Nations, because the Charter is, in Chapter I, expressly founded upon the principles of international law. As Wright has written:

> "The insertion of the words 'justice' and 'international law' in Articles 1 (1) and 2 (3) of the Charter as limitations upon the discretion of the Security Council and other organs in making decisions or recommendations for the settlement of controversies was in response to the fear of small states that their rights might be ignored in possible appeasement of potential aggressors. Recognition in Article 36 of the general rule that members should submit legal disputes to the Court (of International Justice) and in Article 94 of the obligatory character of the Court's decisions had a similar intention."[117]

The Security Council, before taking an action under Chapter VII of the Charter, must determine the existence of any threat to the peace or act of agression under Article 39. The Council did not make this determination with regard to the restrictions imposed by Egypt on the passage through the Suez Canal of ships carrying war

material to Israel. The other possibility is that the Security Council acted under Chapter VI and "recommended" in accordance with Article 37 of the Charter "such terms of settlement as it may consider appropriate." The "terms of settlement" in this case would be calling upon Egypt to terminate the restrictrictions.

After the adoption of the Security Council's resolution, the measures enforced by Egypt were relaxed to the minimal point required for Egypt's defense. Egypt did not, however, concede her legal rights, and Israeli ships were still prohibited passage, although greatly reduced visit and search practices were exercised on neutral vessels.

The question was again raised by Israel before the Security Council on June 2, 1954, at which time, after a further lengthy debate, no action was taken by the Council.

D. An Analysis of the Legal Positions of Israel and Egypt.

One of the arguments invoked and stressed by the Israeli representative is that the General Armistice Agreement between Egypt and Israel was an agreement *sui generis*, ending the state of war. It is, however, settled law, both domestic and international, that a state of war comes to an end only through a voluntary act on the part of all of the belligerents, namely, through either a declaration by the competent authorities or the conclusion of a peace treaty. In fact, the whole question of whether or not a state of war exists between Egypt and Israel is superfluous if we consider that Egypt freely admits the

existence of a state of war and, even if the old technical rule is still operative, such a statement, even after the commencement of hostilities, is determinative of the legal relationship.

Moreover, recognition of Israel can hardly be said to be a *sine qua non* for the existence of a war. With a view to determining the existence of a state of war between Australia and the People's Democratic Republic of North Korea, the Australian Court declared in the Burn's Case :

> "That Australia is at war *de facto* is clear. Whether or not Australia is at war *de jure* depends on the interpretation of the Charter as applied to the circumstances. In this regard, Australia regards itself as at war with an unrecognized entity known as the People's Republic of Korea. All that need be said is that a war, whatever be the strictly technical meaning of that word, is being fought in Korea. This appears to be the attitude of all the nations that are engaged, and from what has already been said, this seems to be clearly the case with the U.K. and the U.S. as well as Australia." [118]

That the state of war continues under the armistice regime for purposes of international law has seemingly been adopted by Israel, at least on some occasions. Israel herself exercised belligerent rights of search and seizure after the signing of the Armistice. One vessel was carrying a cargo of spare parts for military aircraft in Egypt. It sailed from Los Angeles and was to touch at Havana, San Diego, Alexandria, Port Said, and Beirut. Enroute between the Pacific and the Mediterranean, the boat was ordered to alter course and put in at Haifa. When it reached that port, the Israeli authorities confiscated the

cargo. Another well known case was that of the vessel Champollion, carrying a military cargo of munitions and arms destined for the Egyptian army, which also put in at Haifa and had its entire cargo seized by Israeli authorities. In both instances, Egypt lodged no protest, recognizing this as the legitimate exercise of belligerent rights.[119]

In 1956, prior to Israel's attack on Egypt, Israel formally renounced the Armistice Agreement before engaging in hostilities. Such a formal renunciation is required in traditional armistice law before re-opening hostilities; and the fact that Israel re-opened hostilities is indicative of the fact that she accepted the well-settled rule that an armistice is merely a suspension of hostilities and not a termination of the war, although this was inconsistent with her previous argument.

Israel has argued that the Armistice has a special character by reason of its having been concluded under the aegis of the U.N. with a view to the eventual restoration of peaceful relations between the contending camps. Two distinct issues are presented here. First, does the conclusion of an armistice at the behest of the U.N. change its juridical character? Secondly, does the fact that an armistice was concluded with the "view toward the eventual restoration of peaceful relations" change the juridical character of an armistice regime?

With regard to the first question, it must be remembered that the Egyptian-Israeli Armistice was still a negotiated agreement entered into freely by the belligerent parties. Th Israeli delegate at the U.N. referred to

it as a "contract." The U.N. did not, and could not force the specific provisions of that agreement upon the parties. The parties were free to include therein all to which they intended to be bound. This is given additional weight when we consider the amendment to the Agreement by Israel and Egypt on July 23, 1953 which reads as follows:

> The following is herewith agreed by both parties:
>
> In the event a non-military vessel of either party carrying non-military cargo is forced by engine trouble, storm or any other reason beyond the control of the vessel and its crew to seek refuge in the territorial waters of the other party, it shall be granted shelter therein and shall be allowed thereafter to proceed on its way freely and at the earliest possible time, together with its cargo, crew and passengers.[120]

The amendement was signed by Lieutenant Col. S. Gohar for Egypt and Lieutenant Gaon for Israel. The Chairman of the Egyptian-Israeli Mixed Armistice Commission witnessed it. The amendment was in accord with Article XII, para. 3 of the Egyptian-Israeli General Armistice Agreement which states that the parties can modify in any way they see fit the Armistice Agreement that was signed between them. This amendment, in fact, is clear evidence that both Egyptian and Israeli seizure of contraband under other circumstances is valid.

The second question can be answered by reference to the fact that, barring a provision giving an express date of termination, such statements as "with a view to the eventual restoration of peaceful relations" are merely expressions of the basic purpose for which the armistice was concluded, and create an armistice of indefinite

duration. Such statements in no way change the rights, obligations and claims that may exist. The juridical character of the armistice regime remains the same. As the Secretary-General pointed out :

> "In Article IV it is recognized that rights, claims or interests of a non-military character in the area of Palestine covered by the agreement may be asserted by either party and that these, by mutual agreement being excluded from armistice negotiations, shall be, at the discretion of the parties, the subject of later settlement. It follows that the administrative situation created under the Armistice may be challenged as contrary to the rights, claims or interests of one of the parties..." [121]

In a situation where only one of the belligerent parties has outstanding claims, the existence of a state of war may be seen as one more factor to induce settlement. Certainly the party without outstanding claims feels no particular motivation to negotiate a settlement if that means giving up something that it has acquired. Indeed, it would have every reason to declare that it is not in a state of war.

Another Article of the Agreement, Article XI, reemphasizes that no provision of the Agreement shall in any way prejudice the rights, claims and positions of either party in the ultimate peaceful settlement of the Palestine question. As the primary object of the Armistice Agreement, which was prompted by military and not political considerations, was the liquidation of the war on the military level, it could not and did not deal with general questions of administration, jurisdiction, boundaries, citizenship, and sovereignty.

As the Egyptian-Israeli Mixed Armistice Commission determined on two different occasions, Egypt's exercise of visit, search and seizure was not a violation of the Armistice Agreement.[122] The Armistice Agreement limits its purview to warlike or hostile acts committed by any "element of the land, sea, air military or para-military force." As is customary with prize regulations, visit and search of vessels was conducted by Egyptian Customs authorities. No part of the Egyptian land, sea or air military or para-military forces were involved.

The duration for which the Armistice regime has existed is not indicative of a change in its juridical character. The armistice, as in the case of the Arab-Israeli Agreements, may be for an indefinite duration. In the Palestine problem, the long duration of the armistice regime is, in fact, only indicative of the difficulties in concluding a formal settlement and not that the parties have tacitly accepted a status-quo situation or a *de facto* peace.

SECTION III

AN ANALYSIS OF THE EGYPTIAN-ISRAELI GENERAL ARMISTICE AGREEMENT

An analysis of the Armistice Agreement concluded between Egypt and Israel discloses that it contained the provisions which were indicated above[123] as existing in the archetypal armistice agreement.

The Preamble recites the recognition of the capacity and authority of the negotiators as duly authorized representatives of their governments.

Article I sets forth the purpose for which the Agreement was concluded and Sec. 2 of this Article delimits the cessation of hostilities aspect to the extent that "no aggressive action by the armed forces — land, sea or air — of either Party shall be undertaken, planned or threatened against the people or armed forces of the other." Sec. 3 of this Article qualified Sec. 2 by recognizing the "right of each Party to its security and freedom from fear of attack by the armed forces of the other," thus distinguishing between legitimate defensive measures as opposed to prohibited offensive measures. Sec. 4 constitutes

an implicit recognition that the Agreement is only a step toward permanent peace in Palestine and can in no way be construed as a *de facto* situation.

Article II redefines the limitation of the Agreement as extending between the armed forces, air, naval, or military, of the two Parties, and between the armed forces of one Party and the civilians of the other. The Parties will not, under this Article, be permitted to cross the demarcation line established by the Agreement, the air space or the territorial waters.

Article III concerns itself with the withdrawal of Egyptian forces from the Al Faluja area.

Sec. 1 of Article IV, if read by itself, has little practical value because it stipulates that "no military or political advantage should be gained" but this would mean any change in the status quo as it existed at the time the Armistice was signed. What increases the military or political advantage of one of the Parties would, of course, be a highly subjective question and cannot be reasonably reconciled with the undertaking of purely defensive measures as opposed to those which are offensive. Sec. 1 of Article IV has, it appears, more significance if read in conjunction with Sec. 2 of the same Article. What is established by Sec. 2 of Article IV is the status quo of the *military positions* in terms of areas and numbers of troop deployment at the date of signing, and it would seem that it is this which is referred to in Sec. 1. Sec. 3 of this Article specifically states that the "provisions of the Agreement are dictated exclusively by military considerations and are *valid only for the period of*

the Armistice" (Italics added by author). This statement, coupled with the statement in the same Section that "it is not the purpose of this Agreement to establish, to recognize, to strengthen, or to weaken or nullify, in any way, any territorial, custodial, or other rights, claims or interests which may be asserted by either Party in the area of Palestine," suggests that the armistice regime is not of a permanent character. Indeed, to say that the provisions of the Agreement are "valid only for the period of the Armistice" would be a meaningless recital if the armistice regime could be altered only by a treaty of peace. If that were the case, the fact that such provisions are "valid only for the period of the Armistice" would be obvious. The clause referred to above would classify the armistice as one of indefinite duration with all of the legal consequences that flow therefrom. Furthermore, this section explicitly recognizes that these claims of the parties may derive from international law, U. N. Resolutions, or any other source. The military character of the Agreement points up the host of economic, political, social, legal and territorial questions, outstanding between the parties, which are derived from these sources.

Article V sets out the purpose of the demarcation line and expressly states that such demarcation line is in no way to be construed as a political or territorial boundary. Such line is established, the Article recites, in pursuance of the purpose and intent of the Security Council Resolutions of Nov. 4 and 16, 1948.

Article VI delineates geographically the demarcation lines for the purpose of the cessation of hostilities.

Article VII deals with the administrative aspect of withdrawal of forces in sectors where the forces of third parties are situated.

Article VIII establishes a demilitarized zone of the El-Auja area and sets out the area affected with exactness. Movement of the armed forces of either Party into this area will constitute a "flagrant violation" of the Agreement.

Article IX sets forth the manner in which Prisoners of War are to be exchanged.

Article X states that the execution of the provisions of the Agreement shall be supervised by a Mixed Armistice Commission to be composed of three membres designated by each of the Parties with the Chairman being the U. N. Chief of Staff of the Truce Supervision Organization or a senior officer of the Observer personnel designated by the U.N. Chief of Staff in consultation with the Parties to the Agreement. The majority vote rule is agreed upon with an appeal provision to a Special Committee composed of one member of each of the Parties and the U.N. Chief of Staff. The authority is granted to the Mixed Armistice Commission to utilize Observers in carrying out its supervising and implementing function. Under Sec. 8 of this Article, "Where interpretation of the meaning of a particular provision of this Agreement is at issue the Commission's interpretation shall prevail." Thus, the Commission's decisions as to jurisdiction, scope of the provisions of the Agreement, and what constitutes a violation of the Agreement are, by specific agreement between the Parties, all within the competence of the

Commission and are binding on both Parties. Members of the Commission and the Observers are to be permitted freedom of movement in all of the areas covered by the Agreement.

Article XI reiterates the position of Article IV, Sec. 3, that no provision of the Agreement shall in any way prejudice the rights, claims and positions of either Party in any peace negotiations. Its express reiteration in a separate article is to reemphasize the purely military character of the Agreement.

Article XII states that no ratification of the Agreement is necessary and it is to come into force immediately upon being signed. The armistice regime, pursuant to Sec. 2 of this Article, is to remain in effect until a peaceful settlement of the claims outstanding between the Parties. This would seemingly be in conflict with Sec. 3 of Article IV, where a possibility of resumed conflict is recognized. However, Sec. 2 of Article XII would be read in accordance with armistice law as being one of indefinite duration. The Parties to the Agreement may, however, under authority of Sec. 3 of this Article, suspend by mutual consent any provisions of the Agreement *except* Article I and II, that is, the Articles delimiting the cessation of hostilities and establishing the armistice regime. Furthermore, Sec. 3 allows for revision, as in domestic contract law, of *any* of the provisions of the Agreement (*except* Articles I and II) by mutual consent of the Parties. Sec. 3 further provides for the convoking of a conference, one year after the date of signing by the Secretary-General of the U.N., at the request of one of the Parties for the purpose of reviewing, revising or suspending any of the

provisions in accordance with the rest of this section. Sec. 4 states that if a dispute is not resolved *in such conference*, either Party may bring the matter before the Security Council on the grounds that this Agreement has been concluded in pursuance of Security Council action. This provision expressly states what disputes over the Agreement are to be taken to the Council. They are those disputes which are unresolved in a Conference convened one year after the signing of the Agreement. All other disputes are, by express agreement in Article X, Sec. 8, to be decided by the Mixed Armistice Commission and such decision is to be binding on both of the Parties. If the Parties so agreed, it would seem that any action of the Security Council contrary to this provision would be an attempt to reform an agreement freely entered into. This is a course of action which no municipal court or international court would undertake. It is important to note, moreover, that in the law of contracts a party to an agreement cannot import provisions into an agreement, whether such provisions are beneficial to the other party or not, by making an interpretation of its provisions beyond their obvious meaning.

* * *

Thus, the Egyptian-Israeli General Armistice Agreement contains a provision for its effective time and date (immediately upon the signing of the Agreement) ; a provision setting forth the duration of the Agreement by the standard meaning of such provisions (indefinite duration) ; a provision setting forth the lines of demarcation and establishing demilitarized zones; a provision setting forth what acts are prohibited (aggressive action

by the armed forces of either Party against the people or armed forces of the other) ; a provision relating to prisoners of war ; and a provision for the establishment of implementing and supervisory machinery (the Mixed Armistice Commission). The Agreement does not include a provision delineating the relations between the citizens of the two belligerents ; nor does it include miscellaneous political, economic, or social provisions, the omission of which re-inforces the purely military character of the Agreement.

* * *

The question of violations and the rights of the injured Party was to have great importance in the viability of the armistice regime as a result of Israeli "reprisals" and the full-scale attack and occupation of Sinai by Israeli forces in 1956 as well as the occupation by Israel of demilitarized zones and the expulsion of the indigenous Arab residents prior to 1956.

Israel has always taken the position that the violation by Egypt of any provision of the Agreement was a violation of the whole and thus gave her a right to reopen hostilities. This is the theory that the Agreement is indivisible and that such indivisibility would not allow for any distinction in the nature or degree of violation. However, in the Armistice Agreement itself there was an implicit acceptance of Article 40 of both Hague Conventions that distinguished between "serious violations" for which hostilities might be resumed and "minor violations" for which hostilities might not be resumed. Sec. 5 of Article V states that movement of armed forces of either Party into the El-Auja area would constitute a "flagrant violation." The designation of this as a "flagrant violation"

suggests that not all other violations can be considered flagrant and that some violations must be regarded by the non-violating Party as non-flagrant. This usage would be in conformity with both Hague Conventions and, accordingly, not every violation would create a right in the injured Party to re-open hostilities.

When the "indivisibility" of the Armistice Agreements was invoked by Israel, this was purley a *unilateral* treatment of the Agreements and was unlawful. In municipal and international law, such decisions are solely for a court of law, and unilateral treatment of a contract as indivisible is not allowed. One instance of Israel's action in this regard was pointed out by the Secretary-General :

> It is held by Israel that the lack of compliance by Egypt with the Security Council finding that the blockade of Israel shipping in the Suez Canal is incompatible with the armistice regime — which Israel considers to be a case of non-compliance with Article I of the Egyptian-Israeli General Armistice Agreement itself — gives Israel the right to consider Articles VII and VIII of the same Agreement as suspended, and, in consequence, to refuse the U.N. observers freedom of movement in the demilitarized zone at El Auja. Likewise, and on similar grounds, Israel refuses to assist in implementation of the armistice agreement stipulation which establishes the Mixed Armistice Commission's headquarters in El Auja — a stand which explains why recently the Commission has not been able to meet.[124]

Similar grounds were used by Israel as one justification for her Sinai attack and her denunciation of the Armistice Agreement. In his effort to re-establish the armistice

regime between Israel and Egypt the Secretary-General said :

> The very logic of the armistice agreements shows that infringements of other articles cannot serve as a justification for an infringement of the cease-fire article. If that were not recognized, it would mean that any one of such infringements might not only nullify the armistice regime, but in fact put in jeopardy the cease-fire itself.[125]

He then made contacts with the various Arab governments and Israel and asked them for their assurance that they would observe the obligations under the cease-fire clause unconditionally, providing that the other Party complies with the same clause, reserving only their right to self-defense under Article 51 of the Charter. Such assurance was made by all the governments concerned, and it made the Agreements between the Arab States and Israel separable, so that no theory about "indivisibility" could be held by either of the Parties. No Party could any longer justify a violation of the cease-fire by reference to an alleged non-compliance by the other Party to other clauses of the General Armistice Agreements than the cease-fire clause itself.

Israel has consistently taken the position that since 1948 it was Egypt who was conducting acts of war against her and that they have found their most striking expression in the use of force to deprive Israel of her legal rights of free navigation through the Suez Canal. It has also been Israel's contention, on the other hand, that her actions against Egypt were in direct response to Egypt's warlike acts and that she did not consider those actions

as acts of war but as self-defense under Article 51 of the U. N. Charter.

It is, at least, logical that Israel did not attempt to equate Egypt's acts with her own for, whether Israel chooses to call her armed hostilities since the signing of the Armistice Agreements in 1948 "reprisals" or "acts of self-defense," they remain clear violations of the cessation of hostilities provisions of the Agreement as well as a unilateral treatment of the Agreements as indivisible. It would seem that the ratification of the Secretary General's proposal (to regard the Agreements as separable provisions apart from the cease-fire clauses) avoids the problems attendant on regarding a minor violation, real or alleged, as sufficient ground for re-opening hostilities in violation of the cease-fire clauses.

FOOTNOTES

1. Phillipson, *The International Law and Custom of Ancient Greece and Rome*, 287, 289-290. (London, 1911).

2. It is noted that all three of these armistices were concluded under pressure from the United Nations.

3. Paras. 251-270, *Rules of Land Warfare*, U.S. Army, Basic Field Manual 27-10 (Washington, 1940); Sections dealing with same topic in *The Law of Land Warfare*, U.S. Army, Basic Field Manual 27-10 (Washington, 1956) superseding *Rules of Land Warfare* supra; Joseph R. Baker and Henry G. Crocker, *Laws of Land Warfare*, Dept. of State, (Washington, 1919); Moore, *Digest of International Law*, VII, 327-335, and documents there cited which embrace a compilation of the views of publicists.

4. Burgos, *Nociones de Derecho de Guerra*, 144 (Madrid, 1955).

5. Levie, *The Nature and Scope of the Armistice Agreement*, 50 A. J.I.L. 880 (1956).

6. The so-called armistice agreements at the end of the first and second World Wars are examples of such "capitulatory armistices." These armistices contained

many provisions, military, political, and economic, which reveal an arrangement to accomplish far more than a mere cessation of hostilities. For the provisions of these armistices and their implications, see: Maurice, *The Armistices of* 1918, (London, 1943); Graham, *Armistices - 1944 Style*, 39 A.J.I.L., 286 (1943); Same, *Two Armistices and a Surrender*, 40 A.J.I.L. 148 (1946); Monaco, *Les conventions entre belligerents*, Recueil des courts, vol. 75, 277, 335 (1949). The general armistice of Nov. 11, 1918, between the Western Allies and Germany which preceded the Treaty of Versailles, 1919, was regarded as a *de facto* termination of the war by some municipal courts although there had been no formal treaty of peace or bilateral declaration terminating the war. See *Ruffy-Arnell vs. the King* 1 K.B. 599, at 612-13 (1922).

7. Levie, *op. cit.*, 881.

8. Halleck, *International Law* (3rd. ed., Baker), II, 311-312.

9. Stone, *Legal Controls of International Conflict*, 645 (London, 1954).

10. Arab-Israeli General Armistice Agreements: U.N. Doc. S/1264/Rev. 1, Feb. 23, 1949 (Egypt); U.N. Doc. S/1296/Rev. 1, March 23, 1949 (Lebanon); U.N. Doc. S/1302/Rev. 1, April 3, 1949 (Jordan); and U.N. Doc. S/1353/Rev. 1, July 20, 1949 (Syria). The agreement between Indonesia and the Netherlands is called a Truce Agreement (U.N. Doc. S/649, Jan. 17, 1948) despite the fact that it contained military, political

and economic provisions and was substantially an armistice agreement. The India-Pakistan Agreement calls for a "cease-fire" and was called a Truce Agreement also. (U.N. Doc. S/995, Sept. 13, 1948.)

11. Clunet, *Suspension d'armes, armistice, préliminaires de paix*, 46 Journal du droit international privé 173 (1919); Fauchille, *Traité de droit international puplic*, Vol. II, 326 (8th ed. by Bonfils, Paris, 1921); Wheaton, *International Law*, 222 (7th ed. by Keith, London, 1944).

12. Levie, *op. cit.*, 888, suggests that the provisions found in *The Law of Land Warfare*, the new manual of the U.S. Army, are those commonly dealt with in most agreements. See note 3.

13. Nevertheless, only rarely have the parties failed to include such a provision. The specific terms, "suspension of hostilities," were not used in the following armistices: The Truce of Ratisbone of 1684 between Leopold, Emperor of the Holy Roman Empire, and Louis XIV, King of France; The Armistice Protocol signed by the Russians and the Japanese in 1905; and, in more modern times, the Renville Truce Agreement between Indonesia and the Netherlands; the India Pakistan Agreement; and the Arab-Israeli General Armistice Agreements. (See note 10). Par. 256, *Rules of Land Warfare*, U.S. Army, Basic Field Manual 27-10 (Washington, 1940) announces that an armistice need not in specific terms prohibit hostilities.

14. See relevant paragraphs in *Rules of Land Warfare*, U. S. Army, Basic Field Manual 27-10 (Washington, 1940); *The Law of Land Warfare*, U.S. Army, Basic Field Manual 27-10 (Washington, 1956) superseding *Rules of Land Warfare*; British Army manual of Military Law, 1929, (1936), Ch. XIV, *The Laws and Usages of War on Land.*

15. Genet, *Précis de droit maritime pour le temps de guerre*, Paris, Vol. 1, p. 31; Higgins, *Le droit de visite et de capture dans la guerre maritime*, Académie de droit international, Recueil des courts, Vol. 11, p. 79 (1926); Fauchille, *op. cit.* Vol. 11, p. 329 and 536; Josef Kunz, *Kriegsrecht und Neutralitatsrecht*, Wien 1935, pp. 151-152; Fitzmaurice, *The Juridical Clauses of the Peace Treaties*, Académie de droit international, Recueil des courts, 1948, Vol. III, p. 205 (Paris, 1933); Sibert, *L'armistice dans le droit des gens*, Revue générale de droit international public, Vol. 40 (1933); Colombos, *International Law of the Sea*, pp. 689-690 (4th ed., 1959); Gentili, *De Jure Belli*, ii, XII, pp. 302-303; Grotius, *De Jure Belli ac Pacis*, iii, XXI, I-II (Text of 1646, Classics of International Law, Oxford, 1925); Pufendorf, *Of the Law of Nature & Nations*, viii, VII, 3 (Text of 1688, Classics of International Law, Oxford, 1934).

16. *Commercial Cable Co. vs, Burlson*, 255 Fed. 99 (1919); *Kahn vs. Anderson, Warden*, 255 U.S. 1, 9 (1921); *In re Suarez*, Annual Digest of Public International Law Cases, 1943-45 (ed. by Lauterpacht, London, 1949) p. 412; *Schiffahert-Treuhand & Others vs. Her Majesty's Procurator-General*, British

Commonwealth, Judicial Committee of the Privy Council sitting in Prize, 20 I.L.R. 275-276 (1953); *Ruffy-Arnell vs. the King*, 1 K.B. 599 at 612-613 (1922); *Ahmed Emin Bey vs. Great Britain*, 7 T.A.M. 922 (1927, U.K.-Turkish Tribunal).

17. The Armistice of Villafranca on July 8, 1859, allowed in Article 7 that all ships have the right to sail freely on the Adriatic without running the danger of visit or capture. The Truce of Antwerp stated that "all acts of hostility of all nature on sea and land shall cease." The Armistice of Paris that followed Napoleon's abdication in 1814 provided that the blockade of France would be lifted and that all prizes taken after various dates would be restored. Neither of the two original armistice agreements entered into on May 9, 1897, and May 20, 1897, in the Greco-Turkish War of that period, nor the amended agreements reached on June 3, 1897, contained any provisions relating to the naval situation. On June 4, a supplementary agreement was concluded which lifted the Greek blockade, but prohibited Turkey from reinforcing her armies in Greece or bringing in any munitions, limiting her to supplying her troops with food supplies twice a week through designated Greek ports. Paragraph 15 of the Korean Armistice Agreement (U.N. Doc. S/3079, Aug. 7, 1953) provided that neither side was to take advantage of the armistice regime to build up their defensive and offensive capacity. The Agreement on the Cessation of Hostilities in Vietnam (IC/42/Rev. 2, July 20, 1954) provided that neither side was to take advantage of the armistice regime to build up their defensive and

offensive capacity, and that neither side will engage in a blockade of any kind of Vietnam. All of the above-mentioned armistice agreements and their provisions indicate that, but for the inclusion of such provisions, the exercise of blockade or rebuilding offensive or defensive capacity would have been legal under the armistice regime as rights *juri belli*. A recognition that only a cessation of hostilities is effectuated by an armistice and that the state of war continues prompted the parties to the above armistice agreements to include the provisions regarding blockade, search and seizure, rebuilding defenses, etc.

18. Art. 50, Declaration of Brussels of 1874, Recueil général des lois et coutumes de la guerre (Brussels, 1943); Art. 36, Regulations respecting the Laws and Customs of War on Land, annexed to Hague Convention No. II, July 29, 1899 (32 Stat. 1811, 2 Malloy, Treaties 2042); Art. 36, Regulations respecting the Laws and Customs of War on Land, annexed to Hague Convention No. IV, Oct. 18, 1907 (36 Stat. 2277; Malloy, Treaties 2269).

19. Levie, *op. cit.*, p. 882; Calvo, *Le droit international*, Vol. IV, 2436 (5th ed., Paris, 1896).

20. Stone, *op. cit.*, 640.

21. *Arnold, et al. vs. Ellison, et al.* Appellants (1928) 96 Pa. Super. Ct. 118, 124; Hackworth, *Digest of International Law*, Vol. VI, p. 434 (8th ed., 1940-1944).

22. This means, of course, by all belligerent parties.

23. Instances of a unilateral declaration terminating war: Soviet Government terminated, in relation to Russia, World War I. Taracouzio, *The Soviet Union and International Law*, p. 340; Joint Resolution of the U.S. Congress, July 2, 1921, ending the war with Germany and Austro-Hungary. 42 Stat. 105-107; Hackworth, *op. cit.*, Vol. VI, pp. 430-431; The Joint Resolution of the U.S. Congress, Oct. 19, 1951, approved by the President, ending the war with Germany as of that date (65 Stat. 451) and proclaimed by the President, Oct. 24, 1951, Proc. 2950, 16 Fed. Reg. 10915; 46 A.J.I.L. 12; The decree, Sept. 15, 1919, by the President of the Chinese Republic reestablishing peace with Germany after World War I. See *British and Foreign State Papers*, CX VIII, 105-106, League of Nations Treaty Series, IX, 283, 284. Similar unilateral declarations were made by some of the Allies ending World War II.

24. Instances where an armistice was signed and no renewal of hostilities occurred despite the fact that no peace treaty was ever signed are: France and Spain (1720), Sweden and Poland (1776), Spain and Chile (1866), France and Mexico (1867), Russia and Persia (1881).

25. See note 23.

26. Yehuda, *The Inge Toft Controversy*, 54 A.J.I.L. 399.

27. The Lebanese-Israeli General Armistice Agreement. See note 10.

28. The Korean Armistice Agreement. See note 17.

29. Levie, *op. cit.* ,892-893.

30. Spraight, *War rights on Land* 238 (London, 1911); Wheaton, *International Law* 225 (7th ed. by Keith, London, 1934). The notice that is required before resuming hostilities where the armistice is for an indefinite duration is designed so that the other party will not be taken by surprise. See : The War Office, *The Law of War on Land*, London, 1958, p. 128.

31. Baxter, *The Definition of War*, Revue égyptienne droit international, 8 (1960). See Annex A.

32. The law of neutrality comes immediately into effect for third states in a *de jure* war. With regard to *de facto* wars, third states may or may not apply neutrality law.

33. Levie, *op. cit.*, 886.

34. Bluntschli, *Le droit international codifié*, 691 (Trans. from German into French, Paris, 1870); Calvo, *op. cit.*, 2339; Fiore, *International Law Codified*, 1774 (Trans. of 5th Ital. ed. by Borchard, New York, 1918); Hall, *A Treatise on International Law*, 585 (7th ed. by Higgins, Oxford, 1917); Vattel, *The Law of Nations*, iii, XVI, 246; 2 Westlake, *International Law*, 92 (2nd ed., Cambridge, 1913); Wheaton, *op. cit.*, 224; Winthrop, *Military Law and Precedents*, 787 (2nd ed. rev., Washington, 1920).

35. Castren, *The Present Law of War and Neutrality*, 130 (Helsinki, 1954); Fauchille, *op. cit.*, 330; Fenwick,

International Law, 580 (3rd ed., New York, 1952); 2 Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, 283 (Boston, 1922); Lawrence, *The Principles of International Law*, 558 (6th ed., New York, 1915); Phillipson, *Termination of War and Treaties of Peace*, 63 (New York, 1916); Spraight, *op. cit.*, 235; par 256, *Rules of Land Warfare;* par. 487 e, *The Law of Land Warfare;* par. 282, *Laws and Usages of War on Land;* par. 282, *Laws of War on Land.* See note 14.

36. Castren, *op. cit.*, 129; Colombos, *op. cit.*, 689-690; 2 Oppenheim, *International Law*, 546 (7th ed. by Lauterpacht, London, 1952); Higgins, *op. cit.*, Vol. II.

37. Note 32.

38. Note 16.

39. Note 17.

40. A most recent example of this was the U.S. blockade of Cuba in 1962. See : Oppenheim, *op. cit.*, 144; Wilson, *International Law Situations*, 1932 (U.S. Naval War College, 1934).

41. In much of the discussion in the Security Council concerning Egypt's practice of search and seizure of contraband on ships passing through the Suez Canal to Israel, the Israeli delegate constantly referred to this practice as being a "blockade." Several writers on this specific question have continued this erroneous use of words.

42. Colombos, *op, cit.*, 649.

43. Greenspan, *The Modern Law of Land Warfare* 391-392. (Berkley, 1959),

44. Article 51 of the Declaration of Brussels included a statement to the effect that a violation of an armistice gave the other party the right to terminate it. See note 18. Publicists differed as to whether the injured party, without giving notice, might re-open hostilities. See: Oppenheim, *op. cit.*, 555.

45. See note 18.

46. U.N. Doc. S/3596 - Report of the Secretary-General to the Security Council pursuant to the Council's resolution of April 4, 1956, on the Palestine question. S.C.O.R. 11th yr. 1956.

47. *Ibid.*

48. All of the post-World War II armistice agreements establish commissions of one type or another for the purpose of implementing or supervising the implementation of various provisions of the agreements. In many instances the U.N. acted as a third party to these commissions, such as in the Renville Truce Agreement, the India-Pakistan Agreement, and the Arab-Israeli General Armistice Agreements. See note 10. The Vietnam Agreement created a Joint Commission and an International Commission composed of Poland, Canada and India.

49. The jurisdiction of the Court will only attach if all parties to the dispute agree to abide by its decision prior to adjudication.

50. With regard to the dispute between Israel and Egypt concerning Egypt's exercise of visit and search of Israel-bound cargo ships and seizure of contraband, all parties to this dispute agreed that the issues were legal. The Secretary-General of the U.N. urged taking the dispute to the International Court as late as 1959 but Israel declined on grounds of a 1951 Resolution of the Security Council which was not an adjudication of the legal issues in the dispute. See: Larson, *When Nations Disagree*, 109 (New York, 1961).

51. These authors take this position even though Egypt freely admitted that it was in a state of war after the outbreak of hostilities which satisfied the traditional definition of a *de jure* war.

52. Grotius *op. cit.*, iii, c. 3, Sec. 5.

53. *Navios Corp. v. The Ulysses et al.* U.S. Ct. of Appeals, Fourth Circuit, 1958; Phillipson, *op. cit.*, 53; Wilson, *International Law*, 245.

54. Oppenheim, *op. cit.*, 291.

55. Oppenheim, *op. cit.*, 292 states that failure to observe this Article of the Convention neither renders the war illegal nor takes away from the hostilities the character of war.

56. Brownlee, *International Law and the Use of Force by States*, 38 (Oxford, 1963).

57. Wright, 26 A.J.I.L. (1932) at 365; McNair, II Grot. Soc. (1926) at 45; Briggs, *Law of Nations* (2nd ed.) at 976; Westlake, *International Law*, ii (2nd ed., 1913) 1; Anzilotti, *Corso*, iii, 164-165; Strupp, *Das*

volkerrechtliche Delikt, 202 seq.; Hall, *op. cit.*, 434; de Visscher, 5 R.D.I. legis, comp. (1924), 379; Basdevant, 11 R.G.D.I.P. (1904), 420 seq.

58. Brownlee, *op. cit.*, 393.

59. Ibid., 27.

60. Stone, *op. cit.*, 313.

61. *Stankus v. N.Y. Life Ins. Co.*, 312 Mass. 366, 44 N.E. 2nd 687; *Simon Benson*, 1951 A.M.C. 585; *Hamilton v. McClaughry*, C.C. Kan 136 Fed. 445, 449; *New York Life Ins. Co. v. Bennion*, (1946) 10 Cir., 158 Fed. 2d 260; *Navios Corp. v. the Ulysses et al.*, Ct. of Appeals, Fourth Circuit, 1950; *Eliza Ann* (1813) 1 Dodson 242 (High Court of Admiralty, Great Britain); Hudson, *Cases*, at 1368; *U.S.A. v. Pelly and Another*, (1899) 4 Commercial Cases, 100 (Queen's Bench, England) 35. This case rejects the view that third states may fix the legal nature of an armed conflict by recognizing it as a state of war; Ann. Digest, 1946, Case No. 94; *Weissman v. Metropolitan Life Ins. Co.* (1953) 112 F. Supp. 420 (U.S. Dist. Ct., Calif.). See cases cited in 48 A.J.I.L. 155.

62. Hackworth, *op. cit.*, 166-170; Hyde, *op. cit.*, III, 1693-1694; Briggs, *op. cit.*, 972; Eagleton, *The Form and Function of a Declaration of War*, 21, 32 A.J.I.L. 1938.

63. An instance of this is that during the Italo-Ethiopian conflict several states (U.S., U.K, and Switzerland)

applied the rules of neutrality governing land and maritime warfare although the parties had not formally admitted a state of war. Practice in the Korean 'police action' revealed the tendency of states to apply most of the rules governing a war *stricto senso* to "non-war" hostilities. The U.N. Command declared its intent to observe the laws of war. Also, the Korean Armistice specifically obviates any blockade of Korea under the armistice regime. See note 17.

64. See: *U.S.A. v. Pelly and Another*, note 61; Oppenheim, *op. cit.*, 293, note 1.

65. Levie *op. cit.*, suggests in note 26 that the Arab States did not use diplomatic representatives to negotiate the Armistice Agreements because of their refusal to take any action which might, even remotely, imply recognition of the existence of Israel. It would seem that a formal declaration of war was not made by the Arab States in 1948 for the same reason. This argument is buttressed by the language of the notification of intervention *in Palestine* made by the Arab States to the United Nations prior to hostilities in 1948.

66. Borchard, *War and Peace*, 27 id (1933) 114-117; Brownlee, *op. cit.*, 390.

67. Guggenheim, Traite, ii, 510; Oppenheim, *op. cit.*, 293n; Greenspan, *op. cit.*, 531, Stone, *op. cit.*, 313; Briggs, *op. cit.*, 975; Cf. Rousseau, *Droit international public* (1953) 537-538; Hackworth, *op. cit.*, vii, 351, 365, Brownlee, *op. cit.*, 396.

68. Each of the four Geneva Conventions of 1949 applies to a state of "undeclared" war. See Article 2 of each Convention. The rules laid down by these Conventions concerning neutral states therefore apply under such circumstances. The important Convention on Maritime Neutrality adopted on Feb. 20, 1928, and in force Jan. 14, 1931, by the Sixth International Conference of American States uses the term 'war', but there is no evidence as to the way it applied in practice.

69. U.N. Doc. S/801, May 29, 1948.

70. See note 10.

71. U.N. Doc. S/743, May 15, 1948.

72. Addition to law No. 15/1923 numbered No. 73/1948 J.O., May 16, 1948.

73. See Annex B.

74. Many of the Proclamations concerning prize procedure used during World War II were reinstituted.

75. Proclamation No. 38 of July 8, 1948. J.O. No. 38.

76. This Article of the Convention entitles Egypt to take measures for her own defense.

77. Revue egyptienne droit international, 1949, 74.

78. See Annex C.

79. ss/Marine Cap, award of Sept. 21, 1949; R.E.D.I., 1949, 155-157.

80. ss/Carbonello, award of May 12, 1949; R.E.D.I., 1949, 153.

81. ss/Triport, award of Nov. 5, 1949; R.E.D.I., 1950, 216.

82. ss/Flying Trader, award of Feb. 2, 1950; R.E.D.I., 1951, 127-135.

83. ss/Fjeld, award of Nov. 4, 1950; R.E.D.I., 1951, 121-126.

84. See: Rowson, 24 B.Y.B. 160; Same, 23 B.Y.B. 282.

85. U.N. Doc. S/2194, June 12, 1951.

86. Article X, Sec. 8, Egyptian-Israeli General Armistice Agreement.

87. S.C.O.R Suppl., S/2241, July 11, 1951.

88. S.C.O.R. 658th Meeting, Feb. 5, 1954, para. 32.

89. S.C.O.R. 658th Meeting, Feb. 5, 1954, para. 33.

90. S.C.O.R. 549th Meeting, July 26, 1951, para. 34.

91. S.C.O.R. 549th Meeting, July 26, 1951, paras. 30, 40.

92. S.C.O.R. 549th Meeting, July 26, 1951, para. 27.

93. S.C.O.R. 549th Meeting, July 26, 1951, para. 9.

94. S.C.O.R. 550th Meeting, Aug. 1, 1951, para 20.

95. S.C.O.R. 549th Meeting, July 26, 1951, para. 77, 67.

96. S.C.O.R. 661st Meeting, March 12, 1954, para. 43.

97. S.C.O.R. 661st Meeting, March 12, 1954, para. 41.

98. S.C.O.R. 550th Meeting, August 1, 1951, para. 24.

99. *Int. Conciliation*, May, 1954, Carnegie Endowment for Int. Peace, 405-406; also S.C.O.R, 662nd Meeting, March 23, 1954, para. 42.

100. Egypt justified her intervention in Palestine in that Palestine had requested the Arab League for aid. In paragraph 10 (e) of a cablegram dated May 15, 1948 (S/745) sent by the Secretary-General of the League of Arab States to the Secretary-General of the United Nations, the Secretary-General of the Arab League points out that "the Arab States recognize that the independence and sovereignty of Palestine which was so far subject to the British Mandate has now, with the termination of the Mandate, become established in fact."

101. U.N. Doc. S/2298, Sept. 1, 1951.

102. Larson, *op. cit.*

103. S.C.O.R. 553rd Meeting, Aug. 16, 1951, para. 40.

104. S.C.O.R. 553rd Meeting, Aug. 16, 1951, para. 139.

105. S.C.O.R. 553rd Meeting, Aug. 16, 1951, para. 140.

106. S.C.O.R. 552nd Meeting, Aug. 16, 1951, para. 5.

107. S.C.O.R. 555th Meeting, Aug. 16, 1951, para. 101, 102.

108. S.C.O.R. 553rd Meeting, Aug. 16, 1951, para. 44.

109. S.C.O.R. 552nd Meeting, Nov. 13, 1950, para. 18.

110. Shwadran, *Egypt Before the Security Council.* M.E.A., 386 (1951).

111. See note 101.

112. Stone, *op. cit.*, 641, 644.

113. Levie, *op. cit.*, 884.

114. S.C.O.R. 552nd Meeting, Aug. 16, 1951, para. 40.

115. See note 14.

116. Article 96, United Nations Charter.

117. Wright, *International Law and the United Nations*, 43 (New Delhi, 1960).

118. The Egyptian delegate used the Burn's Case in his argument.

119. S.C.O.R. 662nd Meeting, March 23, 1954, para. 38.

120. S.C.O.R. 661st Meeting, March 12, 1954, para. 72.

121. U.N. Doc. A/3512, Secretary-General's report pursuant to 1123(XI) of the General Assembly on Jan. 19, 1957.

122. See note 85.

123. See page 3, supra.

124. U.N. Doc. S/3596. See note 46.

125. U.N. Doc. S/3596. See note 46.

ANNEX A

As soon as usages of warfare have by custom or treaty evolved into laws of war, they are binding upon belligerents under all circumstances and conditions. The major conventions are :

1. Declaration of Paris of April 16, 1856, respecting warfare on sea ;

2. The Geneva Convention of Aug. 22, 1864, for the amelioration of the conditions of wounded soldiers of armies in the field ;

3. The Hague Declaration of 1899 concerning projectiles and explosives launched from balloons ;

4. The Hague Declaration of 1899 concerning projectiles diffusing asphyxiating or deleterious gases ;

5. The Hague Convention for the adaptation to sea warfare of the principles of the Geneva Convention, produced by the First and revised by the Second Peace Conference ;

6. The Hague Convention of 1907 concerning the opening of hostilities ;

7. The Hague Convention of 1907 concerning the

status of enemy merchantmen at the outbreak of hostilities;

8. The Hague Convention of 1907 concerning the laying of automatic submarine contact mines;

9. The Hague Convention of 1907 concerning the bombardment by naval forces in time of war;

10. The Hague Convention of 1907 concerning the restrictions on the right of capture in maritime war;

11. The Hague Convention of 1907 concerning the rights and duties of neutral powers and persons in land warfare and in sea warfare;

12. The Protocol of 1925 concerning the use in war of asphyxiating, poisonous and other gases;

13. The Geneva Convention of 1929 concerning the treatment of sick and wounded and of prisoners of war;

14. The London Protocol of 1936 relating to the use of submarines against merchant vessels; and

15. The four Conventions concluded at Geneva in 1949 and relating to: (a) the treatment of Prisoners of War; (b) the amelioration of the condition of the wounded and sick in armed forces in the field; (c) the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea and (d) the protection of civilian persons in time of war.

ANNEX B

Contraband list issued by the Egyptian Government, published in the official notice of June 29, 1949. J.O. No. 89 :

Category A :

Arms, munitions, explosives, chemicals and related products ; equipment to be used in chemical warfare, with the instruments and apparatus for the manufacture or repair thereof, parts of such articles and those needed for their use ; the substances and ingredients used in the manufacture of such articles.

Category B :

Fuel of every kind with the equipment and vehicles used for its transportation by land, sea and air ; the instruments used for the manipulation or repair thereof.

Spare parts for such equipment, the instruments needed for its use, together with all substances for their manufacture.

Category C :

All means of communication, tools, utensils, instruments, equipment, maps, papers, machines or documents necessary or useful for the conduct of military operations. All articles or materials needed for the use or manufacture thereof.

Category D :

Coins, gold and silver bullion, money and letters of credit, metals or any instruments, substances, plates or other articles needed for their use or manufacture.

ANNEX C

The amended contraband list of the proclamation of October 1, 1950 listed :

1. Arms, munitions, explosives and all war materials, with spare parts of every kind needed for their use or manufacture.

2. Chemical and pharmaceutical products with the machines and instruments used for chemical warfare.

3. Fuel of all kinds.

4. Airplanes, ships and the spare parts thereof.

5. Tractors and vehicles of the types used by military forces.

6. Money, gold and silver bars ; stocks, shares and mineral products, plates and instruments serving for the manufacture thereof.

ANNEX D

EGYPTIAN-ISRAELI GENERAL ARMISTICE AGREEMENT, RHODES, FEB. 24, 1949

Preamble

The Parties to the present Agreement, responding to the Security Council resolution of 16 November 1948 calling upon them, as a further provisional measure under Article 40 of the Charter of the United Nations and in order to facilitate the transition from the present truce to permanent peace in Palestine, to negotiate an Armistice; having decided to enter into negotiations under United Nations Chairmanship concerning the implementation of the Security Council resolutions of 4 and 16 November 1948; and having appointed representatives empowered to negotiate and conclude an Armistice Agreement;

The undersigned representatives, in the full anthority entrusted to them by their respective Governments, have agreed upon the following provisions:

Article I

With a view to promoting the return to permanent peace in Palestine and in recognition of the importance

in this regard of mutual assurances concerning the future military operations of the Parties, the following principles, which shall be fully observed by both Parties during the Armistice, are hereby affirmed :

1. The injunction of the Security Council against resort to military force in the settlement of the Palestine question shall henceforth be scrupulously respected by both Parties.

2. No aggressive action by the armed forces — land, sea, or air — of either Party shall be undertaken, planned, or threatened against the people or the armed forces of the other; it being understood that the use of the term "planned" in this context has no bearing on normal staff planning as generally practiced in military organizations.

3. The right of each Party to its security and freedom from fear of attack by the armed forces of the other shall be fully respected.

4. The establishment of an armistice between the armed forces of the two Parties is accepted as an indispensable step toward the liquidation of armed conflict and the restoration of peace in Palestine.

Article II

1. In pursuance of the foregoing principles and of the resolutions of the Security Council of 4 and 16 November 1948, a general armistice between the armed forces of the two Parties - land, sea and air-is hereby established.

2. No element of the land, sea or air military or para-military forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or para-military forces of the other Party, or against civilians in territory under the control of that Party; or shall advance beyond or pass over for any purpose whatsoever the Armistice Demarcation Line set forth in Article VI of this Agreement; and elsewhere shall not violate the international frontier; or enter into or pass through the air space of the other Party or through the waters within three miles of the coastline of the other Party.

Article III

1. In pursuance of the Security Council's resolution of 4 November 1948, and with a view to the implementation of the Security council's resolution of 16 November 1948, the Egyptian Military Forces in the AL FALUJA area shall be withdrawn.

2. This withdrawal shall begin on the day after that which follows the signing of this Agreement, at 0500 hours GMT, and shall be beyond the Egypt-Palestine frontier.

3. The withdrawal shall be under the supervision of the United Nations and in accordance with the Plan of Withdrawal set forth in Annex I to this Agreement.

Article IV

With specific reference to the implementation of the resolutions of the Security Council of 4 and 16 November 1940, the following principles and purposes are affirmed:

1. The principle that no military or political advantage should be gained under the truce ordered by the Security Council is recognized.

2. It is also recognized that the basic purposes and spirit of the Armistice would not be served by the restoration of previously held military positions, changes from those now held other than as specifically provided for in this Agreement, or by the advance of the military forces of either side beyond positions held at the time this Armistice Agreement is signed.

3. It is further recognized that rights, claims or interests of a non-military character in the area of Palestine covered by this Agreement may be asserted by either Party, and that these, by mutual agreement being excluded from the Armistice negotiations, shall be, at the discretion af the Parties, the subject of later settlement. It is emphasized that it is not the purpose of this Agreement to establish, to recognize, to strengthen, or to weaken or nullify, in any way, any territorial, custodial or other rights, claims or interests which may be asserted by either Party in the area of Palestine or any part or locality thereof covered by this Agreement, whether such asserted rights, claims or interests derive from Security Council resolutions, including the resolution of 4 November 1948 and the Memorandum of 13 November 1948 for its implementation, or from any other source. The provisions of this Agreement are dictated exclusively by military considerations and are valid only for the period of the Armistice.

Article V

1. The line described in Article VI of this Agreement shall be designated as the Armistice Demarcation Line and is delineated in pursuance of the purpose and intent of the resolutions of the Security Council of 4 and 16 November 1948.

2. The Armistice Demareation Line is not to be construed in any sense as a political or territorial boundary, and is delineated without prejudice to rights, claims and positions of either Party to the Armistice as regards ultimate settlement of the Palestine question.

3. The basic purpose of the Armistice Demarcation Line is to delineate the line beyond which the armed forces of the respective Parties shall not move except as provided in Article III of this Agreement.

4. Rules and regulations of the armed forces of the Parties, which prohibit civilians from crossing the fighting lines, or entering the area between the lines, shall remain in effect after the signing of this Agreement with application to the Armistice Demarcation Line defined in Article VI.

Article VI

1. In the GAZA-RAFAH area the Armistice Demarcation Line shall be as delineated in paragraph 2.B (i) of the Memorandum of 13 November 1948 on the implementation of the Security Council resolution of 4 November 1948, namely by a line from the coast at the

mouth of the Wadi Hasi in an easterly direction through Deir Suneid and across the Gaza-Al Majdal Highway, then in a southerly direction parallel to the Gaza-Al Majdal Highway, and continuing thus to the Egyptian frontier.

2. Within this line Egyptian forces shall nowhere advance beyond their present positions, and this shall include Beit Hanun and its surrounding area from which Israeli forces shall be withdrawn to north of the Armistice Demarcation Line, and any other positions within the line delineated in paragraph 1 which shall be evacuated by Israeli forces as set forth in paragraph 3.

3. Israeli outposts, each limited to platoon strength, may be maintained in this area at the following points: Deir Suneid, on the north side of the Wadi (MR 10751090); 700 SW of Sa'ad (MR 10500982); Sulphur Quarries (MR 09870924); Tall-Jamma (MR 09720887); and KHAL Ma'in (MR 09320821). The Israeli outpost maintained at the Cemetry (MR 08160723) shall be evacuated on the day after that which follows the signing of this Agreement. The Israeli outpost at Hill 79 (MR 10451017) shall be evacuated not later than four weeks following the day on which this Agreement is signed. Following the evacuation of the above outposts, new Israeli outposts may be established at MR 08360700, and at a point due east of Hill 79 east of the Armistice Demarcation Line.

4. In the BETHLEHEM-HEBRON area, wherever positions are held by Egyptian forces, the provisions of this Agreement shall apply to the forces of both Parties

in each such locality, except that the demarcation of the Armistice Line and reciprocal arrangements for withdrawal and reduction of forces shall be undertaken in such manner as may be decided by the Parties, at such time as an Armistice Agreement may be concluded covering military forces in that area other than those of the Parties to this Agreement, or sooner at the will of the Parties.

Article VII

1. It is recognized by the Parties to this Agreement that in certain sectors of the total area involved, the proximity of the forces of a third party not covered by this Agreement makes impractical the full application of all provisions of the Agreement to such sectors. For this reason alone, therefore, and pending the conclusion of an Armistice Agreement in place of the existing truce with that third party, the provisions of this Agreement relating to reciprocal reduction and withdrawal of forces shall apply only to the western front and not to the eastern front.

2. The areas comprising the western and eastern fronts shall be as defined by the United Nations Chief of Staff of the Truce Supervision Organization, on the basis of the deployment of forces against each other and past military activity or the future possibility thereof in the area. This definition of the western and eastern fronts is set forth in Annex II of this Agreement.

3. In the area of the western front under Egyptian control, Egyptian defensive forces only may be maintained. All other Egyptian forces shall be withdrawn from

this area to a point or points no further east than El Arish-Abou Aoueigila.

4. In the area of the western front under Israeli control, Israeli defensive forces only, which shall be based on the settlements, may be maintained. All other Israeli forces shall be withdrawn from this area to a point or points north of the line delineated in paragraph 2.A of the Memorandum of 13 November 1948 on the implementation of the resolution of the Security Council of 4 November 1948.

5. The defensive forces referred to in paragraphs 3 and 4 above shall be as defined in Annex III to this Agreement.

Article VIII

1. The area comprising the village of El Auja and vicinity, as defined in paragraph 2 of this Article, shall be demilitarized, and both Egyptian and Israeli armed forces shall be totally excluded thereform. The Chairman of the Mixed Armistice Commission established in Article X of this Agreement and United Nations Observers attached to the Commission shall be responsible for ensuring the full implementation of this provision.

2. The area thus demilitarized shall be as follows: From a point on the Egypt-Palestine frontier five (5) kilometres north-west of the intersection of the Rafah-El Auja road and the frontier (MR 08750468), south-east to Khashm El Mamdud (MR 09650414), thence south-east to Hill 405 (MR 10780285), thence south-west to a point

on the Egypt-Palestine frontier five (5) kilometres south-east of the intersection of the old railway tracks and the frontier (MR 09950145), thence returning north-west along the Egypt-Palestine frontier to the point of origin.

3. On the Egyptian side of the frontier, facing the El-Auja area, no Egyptian defensive positions shall be closer to El Auja than El Qouseima and Abou Aoueigila.

4. The road Taba-Qouseima-Auja shall not be employed by any military forces whatsoever for the purpose of entering Palestine.

5. The movement of armed forces of either Party to this Agreement into any part of the area defined in paragraph 2 of this Article, for any purpose, or failure by either Party to respect or fulfil any of the other provisions of this Article, when confirmed by the United Nations representatives, shall constitute a flagrant violation of this Agreement.

Article IX

All prisoners of war detained by either Party to this Agreement and belonging to the armed forces, regular or irregular, of the other Party shall be exchanged as follows:

1. The exchange of prisoners of war shall be under United Nations supervision and control throughout. The exchange shall begin within ten days after the signing of this Agreement and shall be completed not later than twenty-one days following. Upon the signing of this

Agreement, the Chairman of the Mixed Armistice Commission established in Article X of this Agreement, in consultation with the appropriate military authorities of the Parties, shall formulate a plan for the exchange of prisoners of war within the above period, defining the date and places of exchange and all other relevant details.

2. Prisoners of war against whom a penal prosecution may be pending, as well as those sentenced for crime or other offence, shall be included in this exchange of prisoners.

3. All articles of personal use, valuables, letters, documents, identification marks, and other personal effects of whatever nature, belonging to prisoners of war who are being exchanged, shall be returned to them, or, if they have escaped or died, to the Party to whose armed forces they belonged.

4. All matters not specifically regulated in this Agreement shall be decided in accordance with the principles laid down in the International Convention relating to the Treatment of Prisoners of War, signed at Geneva on 27 July 1929.

5. The Mixed Armistice Commission established in Article X of this Agreement shall assume responsibility for locating missing persons, whether military or civilian, within the areas controlled by each Party, to facilitate their expeditious exchange. Each Party undertakes to extend to the Commission full co-operation and assistance in the discharge of this function.

Article X

1. The execution of the provisions of this Agreement shall be supervised by a Mixed Armistice Commission composed of seven members, of whom each Party to this Agreement shall designate three, and whose Chairman shall be the United Nations Chief of Staff of the Truce Supervision Organization or a senior officer from the Observer personnel of that organization designated by him following consultation with both Parties to this Agreement.

2. The Mixed Armistice Commission shall maintain its headquarters at El Auja, and shall hold its meetings at such places and at such times as it may deem necessary for the effective conduct of its work.

3. The Mixed Armistice commission shall be convened in its first meeting by the United Nations Chief of Staff of the Truce Supervision Organization not later than one week following the signing of this Agreement.

4. Decisions of the Mixed Armistice Commission, to the extent possible, shall be based on the principle of unanimity. In the absence of unanimity, decisions shall be taken by a majority vote of the members of the Commission present and voting. On questions of principle, appeal shall lie to a Special Committee, composed of the United Nations Chief of Staff of the Truce Supervision Organization and one member each of the Egyptian and Israeli Delegations to the Armistice Conference at Rhodes or some other senior officer, whose decisions on all such

questions shall be final. If no appeal against a decision of the Commission is filed within one week from the date of said decision, that decision shall be taken as final. Appeals to the Special Committee shall be presented to the United Nations Chief of Staff of the Truce Supervision Organization, who shall convene the Committee at the earliest possible date.

5. The Mixed Armistice Commission shall formulate its own rules of procedure. Meetings shall be held only after due notice to the members by the Chairman. The quorum for its meetings shall be a majority of its members.

6. The Commission shall be empowered to employ Observers, who may be from among the military organizations of the Parties or from the military personnel of the United Nations Truce Supervision Organization, or from both, in such numbers as may be considered essential to the performance of its functions. In the event United Nations Observers should be so employed, they shall remain under the command of the United Nations Chief of Staff of the Truce Supervision Organization. Assignments of a general or special nature given to United Nations Observers attached to the Mixed Armistice Commission shall be subject to approval by the United Nations Chief of Staff or his designated representative on the Commission, whichever is serving as Chairman.

7. Claims or complaints presented by either Party relating to the application of this Agreement shall be referred immediately to the Mixed Armistice Commission

through its Chairman. The Commission shall take such action on all such claims or complaints by means of its observation and investigation machinery as it may deem appropriate, with a view to equitable and mutually satisfactory settlement.

8. Where interpretation of the meaning of a particular provision of this Agreement is at issue, the Commission's interpretation shall prevail, subject to the right of appeal as provided in paragraph 4. The Commission, in its discretion and as the need arises, may from time to time recommend to the Parties modifications in the provisions of this Agreement.

9. The Mixed Armistice Commission shall submit to both Parties reports on its activities as frequently as it may consider necessary. A copy of each such report shall be presented to the Secretary-General of the United Nations for transmission to the appropriate organ or agency of the United Nations.

10. Members of the Commission and its Observers shall be accorded such freedom of movement and access in the areas covered by this Agreement as the Commission may determine to be necessary, provided that when such decisions of the Commission are reached by a majority vote United Nations Observers only shall be employed.

11. The expenses of the commission, other than those relating to United Nations Observers, shall be apportioned in equal shares between the two Parties to this Agreement.

Article XI

No provision of this Agreement shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question.

Article XII

1. The present Agreement is not subject to ratification and shall come into force immediately upon being signed.

2. This Agreement, having been negotiated and concluded in pursuance of the resolution of the Security Council of 16 November 1948 calling for the establishment of an armistice in order to eliminate the threat to the peace in Palestine and to facilitate the transition from the present truce to permanent peace in Palestine, shall remain in force until a peaceful settlement between the Parties is achieved, except as provided in paragraph 3 of this Article.

3. The parties to this Agreement may, by mutual consent, revise this Agreement or any of its provisions, or may suspend its application, other than Articles I and II, at any time. In the absence of mutual agreement and after this Agreement has been in effect for one year from the date of its signing either of the Parties may call upon the Secretary-General of the United Nations to convoke a conference of representatives of the two Parties for the purpose of reviewing, revising or

suspending any of the provisions of this Agreement other than Articles I and II. Participation in such conference shall be obligatory upon the Parties.

4. If the conference provided for in paragraph 3 of this Article does not result in an agreed solution of a point in dispute, either Party may bring the matter before the Security Council of the United Nations for the relief sought on the grounds that this Agreement has been concluded in pursuance of Security Council action toward the end of achieving peace in Palestine.

5. This Agreement supersedes the Egyptian-Israeli General Cease-Fire Agreement entered into by the Parties on 24 January 1949.

6. This Agreement is signed in quintuplicate, of which one copy shall be retained by each Party, two copies, communicated to the Secretary-General of the United Nations for transmission to the Security Council and to the United Nations Conciliation Commission on Palestine, and one copy to the Acting Mediator on Palestine.

IN FAITH WHEREOF the undersigned representatives of the Contracting Parties have signed hereafter, in the persence of the United Nations Acting Mediator on Palestine and the United Nations Chief of Staff of the Truce Supervision Organization.

Done at Rhodes, Island of Rhodes, Greece, on the twenty-fourth of February nineteen forty-nine.

RESEARCH CENTER
PALESTINE LIBERATION ORGANIZATION
606 SADAT STREET (Apt. 22)
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